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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 406

THE UNITED STATES OF AMERICA, PETITIONER

vs.

HARRY S KNIGHT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 14, 1948
CERTIORARI GRANTED NOVEMBER 15, 1948

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APPELLANT'S APPENDIX

I.

RELEVANT DOCKET ENTRIES

1945

Apr. 20, Order that indictment be impounded pending further order of this Court (Smith, J.)

Apr. 20, Indictment: Violation: 11 USC 32(a); 18 USCA 550; and 18 USC 88: 3 cts. A True Bill. PS 2.

June 13, Impounded Indictment opened and released from impoundment by Judge Smith.

June 19, Pleas of Not Guilty as to: Homer N. Davis; George L. Fenner, Sr.; Harry S. Knight and Donald M. Johnson; with right reserved to above named defendants to withdraw pleas of not guilty for the purpose of addressing to the indictment such motions as they deem fit and proper; such motions to be filed not later than June 30, 1945, and if any filed to be heard July 10, 1945 at 10 a. m. (Smith, J.).

June 19, Pleas as to Robert Michael: Guilty.

* * * * * * * * *

June 30, As to Harry Knight: Demurrer to Indictment.

June 30, As to Harry S. Knight: Motion for Bill of Particulars.

June 30, As to Harry S. Knight: Plea in Abatement.

June 22, Recognizance of Harry S. Knight in sum of $500. with U. S. Fidelity & Guaranty Co. of Baltimore, Md.

as surety, with Power of Attorney attached thereto, for appearance before Mid. Dist. Court on July 10, 1945 etc.

July 3, Order dated July 2, 1945 granting leave to defendant Harry Knight to file demurrer on the 2nd day of July, 1945 (Smith, J.).

July 10, As to Harry S. Knight: Order dismissing motion for bill of particulars and granting exception (Smith, J.). (Order on backer of motion filed June 30, 1945).

July 10, As to Harry Knight: Order dismissing Plea in Abatement and granting exception (Smith, J.). (Order on backer of Plea in Abatement filed June 30, 1945).

July 10, As to Harry Knight: Order dismissing Demurrer to Indictment and granting exception (Smith, J.). (Order on backer of Demurrer filed June 30, 1945).

Oct. 15, Motion for separate trial or severance by Harry S. Knight and Order denying motion and granting exception (Smith, J.).

Oct. 16, Jury called to the box, challenged and sworn (See List).

Oct. 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30, 31, Nov. 1, 2, 5, 6, 7, 8, 9, 1945, Trial. (See Witness Lists). (18½ das.).

Nov. 10, Verdict:

First Count: Homer N. Davis and Donald M. Johnson, Not Guilty.

George L. Fenner, Sr. and Harry S. Knight, Guilty.

Second Count: Homer N. Davis and Donald M. Johnson, Not Guilty.

George L. Fenner, Sr. and Harry S. Knight, Guilty.

Third Count: Homer N. Davis and Donald M. Johnson, Not Guilty.

George L. Fenner, Sr. and Harry S. Knight, Guilty.

Oct. 26, Motion for directed verdict at close of Government's Case as to defendant, Harry S. Knight, and Order dated Oct. 29, 1945 on backer thereof denying motion and granting an exception (Smith, J.).

Nov. 10, Petition for production of grand jury minutes of testimony of J. D. Reifsnyder by defendant Donald M. Johnson. (This petition handed to the Clerk for filing on Nov. 10 by Judge Smith).

Nov. 10, Exhibit Lists (5 sheets).

Nov. 10, Government Exhibits Nos. G1a, b, c, d, e, f, g, h, i; G-2, 2 b, c, d; G-3, a, b, c, d, e; G-4; G-5; G-7; G8b & c; G-10; G11a & b; G-12; G-13; G-14; G-15; G-16 G-17; G-18; G-19; G-20 & G-21. Defendant Exhibits (Knight): Nos. DK-4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 19A & 20. Defendant Exhibits (Johnson): Nos. DJ-5, 6, 7, 8, 9, 11, 12, 14, 15, 19 & 20.

Docket Entries

Dec. 11, Motions in Arrest of Judgment and for New Trial as to defendant, Harry S. Knight.

Dec. 11, Copies of 2 foregoing motions mailed to Hon. William F. Smith, Newark, N. J. and Hon. John S. Pratt, Special Attorney General, Department of Justice, Washington, D. C.

1946

Sep. 12, Arguments at Scranton re: Motions in arrest of Judgments and for New Trial as to defendants Knight and Fenner.

1947

Mar. 25, Recommendation of Valentine C. Hammack, Special Assistant to the Attorney General, in behalf of Robert Michael, Defendant, that court grant probation. (Note): See also case No. 11313. Re: USA vs. Robert Michael.

May 6, Opinion by Hon. J. Cullen Ganey dated May 5, 1947 denying motions in arrest of judgment and for a new trial as to defendants Knight and Fenner.

May 14, Notice of Appeal, filed in triplicate, of defendant Harry S. Knight, from opinion dated May 5, 1947 and filed May 6, 1947.

June 28, Opinion of Circuit Court of Appeals that appeal will be dismissed without prejudice.

June 28, Order Circuit Court of Appeals dismissing appeal of Harry S. Knight without prejudice.

July 18, Sentence: As to Harry S. Knight, pay a fine of $1,000 (Ganey).

July 18, Notice of deft. Harry Knight of election under Rule 38(a) (2) Not to Pay Fine.

July 18, Order admitting deft. Harry Knight to bail pending appeal.

July 18, Copies mailed to Arthur A. Maguire and M. H. Goldschein.

July 18, Notice of Appeal and Statement of Service thereon.

July 18, Copy of Notice of Appeal forwarded Wm. P. Rowland, Clerk U. S. Circuit Court of Appeals, together with Forms of Notice as prescribed by Supreme Court General Orders.

July 18, Appeal Bond of Harry S. Knight in the sum of $2,000.00 with United States Fidelity and Guaranty Co., of Baltimore, Md. as surety, with Power of Attorney attached thereto, and Order of Approval.

July 18, Designation of Record on Appeal under Rule 39b of Federal Rules of Criminal Procedure, together with Statement of service thereon.

July 18, Copy of Letter to Hon. J. Cullen Ganey, U. S. District Judge re: Appeal of Harry S. Knight.

July 23, Letter from Clerk, Circuit Court, acknowledging receipt of notice of appeal and statement of service on opposing counsel.

July 25, Stipulation and Order that the Govt. shall have until Aug. 25, 1947 to designate additional portions of the Record for certification in the Circuit Court of Appeals (M).

July 26, Amended Designation of Record on Appeal as to Harry S. Knight.

July 26, Statement of Points as to Harry S. Knight.

Aug. 23, Designation of Portions of Record, etc. on appeal on behalf of Appellee.

Aug. 28, Order dated Aug. 26, 1947 designating record on appeal and directing clerk to forward files to Clerk, U. S. Circuit Court of Appeals for Third Circuit, Philadelphia Pa. in re. Harry S. Knight, Appellant (Gancy, J.).

Aug. 28, Cert. copy order mailed J. Julius Levy, Esq., and U. S. Atty.

Sept. 2, Files designated on Appeal forwarded to Clerk, U. S. Circuit Court of Appeals, 3rd Circuit, Philadelphia, Pa., except those set forth in Letter of Transmittal of Files on Appeal (See Letter).

Sep. 6, Letter from Clerk U. S. Circuit Court of Appeals, acknowledging files on Appeal.

H.

INDICTMENT

No. 11348

United States of America,
Middle District of Pennsylvania, ss.:

In the District Court of the United States within and for the Middle District of Pennsylvania, at the March Term thereof, in the year Nineteen Hundred and Forty Four, as extended by order of the Court.

FIRST COUNT

The Grand Jurors of the United States of America, duly empaneled, sworn or affirmed, and charged to inquire of and concerning crimes and offenses within and for the said District, upon their oaths and affirmations aforesaid, respectively do present:

That heretofore, to wit, on or about the 5th day of August, 1938, a petition for reorganization under the provisions of Chapter 10 of the Bankruptcy Act, to wit, Title 11 U. S. C. 501, et seq., was duly filed in the United States District Court, for the Middle District of Pennsylvania with reference to the Central Forging Company, a corporation having its principal place of business at Cata-

wissa, Pennsylvania, said proceeding for reorganization being filed in said Court as No. 9822 in Bankruptcy, and subsequent thereto, in the course of said proceedings, Robert Michael, the defendant herein, was on the 27th day of December, 1941, duly appointed Trustee of said Central Forging Company, said appointment to take effect January 1, 1942, to fill a vacancy caused by the resignation of a trustee who had been appointed prior thereto, and said Robert Michael did duly qualify as such Trustee, and did continue as such Trustee throughout the entire time and in connection with all the matters hereinafter set forth:

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that the said Robert Michael on or about the 24th day of April, 1942, and within three years prior to the finding of this indictment, at the Middle Judicial District of Pennsylvania, and within the jurisdiction of this Court, did knowingly, unlawfully, fraudulently and feloniously appropriate to his own use moneys and funds in the sum of Three Thousand Dollars ($3,000.00), said moneys and funds being then and there properly belonging to the estate of said Central Forging Company, and which said moneys and funds had come into the charge of said defendant Robert Michael as Trustee in said corporate reorganization proceedings, in the manner and by the means set forth below:

That on or about the date and at the place heretofore set forth Homer N. Davis, George L. Fenner, Sr., Donald M. Johnson and Harry S. Knight, also defendants herein, together with J. Donald Reifsnyder, not indicted therein but thereafter referred to as the confederate, and divers other persons to the Grand Jurors unknown, did knowing-

ly, unlawfully, fraudulently and feloniously aid, abet, counsel, induce and procure the defendant Robert Michael to appropriate to his own use moneys and funds belonging to the estate of said Central Forging Company in the manner and by the means set forth herein.

That the defendant Robert Michael, acting as Trustee in said reorganization proceedings, did arrange for the sale of all the assets of said Central Forging Company to the Maxi Manufacturing Company, under what was then designated a plan of reorganization, for an agreed amount; that the defendants and confederate herein did arrange that a part of the amount agreed upon as the purchase price of said assets, to wit, Three Thousand Dollars ($3,000.00) be paid to the defendant Robert Michael, individually and not as Trustee of said Central Forging Company; that the defendants and confederate herein did pay to the defendant Robert Michael Three Thousand Dollars ($3,000.00), as aforesaid; that the defendants and confederate did thereupon cause the accounts receivable in the assets of the estate of said Central Forging Company to be reduced in the valuation thereof by the sum of Three Thousand Dollars ($3,000.00) and did thereupon cause to be entered in the accounts of said estate the amount received from said Maxi Manufacturing Company for the estate of said Central Forging Company in a sum less by said Three Thousand Dollars ($3,000.00) than had actually been paid therefor to the defendant Robert Michael, as Trustee; that said Defendants and confederate, well knowing that said Three Thousand Dollars ($3,000.00) was part of the purchase price then and there paid by said Maxi Manufacturing Company for the assets of the estate of said Central Forging Company and that said sum belonged to

and was a part of the estate of the Central Forging Company, did aid, abet, counsel, induce and procure the defendant Robert Michael, Trustee of the aforesaid estate, not to deposit the same in the funds nor list the same in the accounts of the estate of said Central Forging Company and not to use the same for the benefit of said estate, but on the contrary to appropriate the same in the manner and by the means aforesaid; all contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SECOND COUNT

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

That heretofore, to wit, on or about the 5th day of August, 1938, a petition for reorganization under the provisions of Chapter 10 of the Bankruptcy Act, to wit, Title 11 U. S. C. 501 et seq., was duly filed in United States District Court for the Middle District of Pennsylvania with reference to the Central Forging Company, a corporation having its principal place of business at Catawissa, Pennsylvania, said proceeding for reorganization being filed in said Court as No. 9822 in Bankruptcy, and subsequent thereto, in the course of the said proceedings, Robert Michael, the defendant herein, was on the 27th day of December, 1941, duly appointed Trustee of said Central Forging Company, said appointment to take effect January 1, 1942, to fill a vacancy caused by the resignation of a trustee who had been appointed prior thereto, and said

Robert Michael did duly qualify as such Trustee, and did continue as such Trustee throughout the entire time and in connection with all matters hereinafter set forth;

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that said Robert Michael, defendant herein, on or about the 24th day of April, 1942, and within three years prior to the finding of this indictment, at the Middle District of Pennsylvania, and within the jurisdiction of this Court, having theretofore received into his custody, possession and control the various assets of said Central Forging Company, which said assets had come into his charge as Trustee, did then and there knowingly, unlawfully, fraudulently and feloniously transfer certain property of the estate of said Central Forging Company, to wit, accounts receivable to the approximate value of Three Thousand Dollars ($3,000.00); in the manner and by the means set forth below.

That on or about the date and at the place heretofore set forth, Homer N. Davis, George L. Fenner, Sr., Donald M. Johnson and Harry S. Knight, also defendants herein, together with J. Donald Reifsnyder, not indicted herein but hereafter referred to as the confederate, and divers other persons to the Grand Jurors unknown, did knowingly, unlawfully, fraudulently and feloniously, aid, abet, counsel, induce and procure the defendant Robert Michael knowingly and fraudulently to transfer accounts receivable belonging to the estate of said Central Forging Company, in the manner and by the means set forth herein.

That the defendant Robert Michael, acting as Trustee in said reorganization proceedings did arrange for the transfer of the assets of said Central Forging Company

to the Maxi Manufacturing Company under what was then designated a plan of reorganization for an amount which was agreed upon between them; that the defendants and confederate herein did thereupon cause certain assets of said Central Forging Company, to wit, accounts receivable, which had theretofore been valued at approximately $23,534.50, to be shown in the records of said estate to have a valuation of $20,534.50, then and there well knowing that the said Maxi Manufacturing Company was paying for said assets of said Central Forging Company an amount which included the accounts receivable at their value of $23,534.50, and did represent the amount received from said Maxi Manufacturing Company for said assets to be a sum less by Three Thousand Dollars ($3,000.00) than was actually being paid by said Maxi Manufacturing Company therefor and which was Three Thousand Dollars ($3,000.00) less than was actually being received by the defendant Robert Michael, as Trustee; that said defendants and confederate did aid, abet, counsel, induce and procure the defendant Robert Michael to deprive said estate of the use and benefit of the Three Thousand Dollars ($3,000.00) aforesaid, in that, as they well knew, the defendant Robert Michael did transfer said assets to said Maxi Manufacturing Company without depositing in his funds as Trustee of the estate of the Central Forging Company the sum of Three Thousand Dollars ($3,000.00), aforesaid, and thereby deprived the estate of the Central Forging Company of the benefit of the purchase price therefor to the extent of the sum of Three Thousand Dollars ($3,000.00) aforesaid; all contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THIRD COUNT

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

That beginning on or about the 27th day of December, 1941, and continuously thereafter up to the date of the filing of this indictment, in the Middle District of Pennsylvania and within the jurisdiction of this Court, Homer N. Davis, George L. Fenner, Sr., Donald M. Johnson, Harry S. Knight and Robert Michael, defendants herein, together with J. Donald Reifsnyder, not indicted herein but hereafter referred to as the confederate, and divers other persons to the Grand Jurors unknown, unlawfully, wilfully, and knowingly did conspire, combine, confederate and agree together and with each other and with divers other persons to the Grand Jurors unknown, to commit an offense against the United States, to wit, to violate Title 11, Section 52(a) U. S. C., in the manner and by the means described in the first and second counts of this indictment, each and every allegation of said counts being reaffirmed, realleged and incorporated as if herein set forth, except the first paragraphs therein.

OVERT ACTS

1. In pursuance of said conspiracy and to effect the objects thereof, at the Middle District of Pennsylvania, and within the jurisdiction of this Court, on or about the 24th day of April, 1942, Harry S. Knight, Robert Michael,

George L. Fenner, Sr., and Homer N. Davis, defendants herein, and J. Donald Reifsnyder, confederate herein, met at the office of the defendant Harry S. Knight at Sunbury, Pennsylvania.

2. And further in pursuance of said conspiracy and to effect the objects thereof, at the Middle District of Pennsylvania and within the jurisdiction of this Court, on or about the 9th day of April, 1942, the defendant Harry S. Knight did write a certain letter to the defendant Homer N. Davis.

3. And further in pursuance of said conspiracy and to effect the objects thereof, at the Middle District of Pennsylvania and within the jurisdiction of this Court, on or about the 24th day of April, 1942, the defendants and confederate herein caused to be cashed at the Catawissa National Bank, Catawissa, Pennsylvania, a check payable to the defendant George L. Fenner, Sr., in the amount of Three Thousand Dollars ($3,000.00), drawn on the Maxi Manufacturing Company account at the Catawissa National Bank.

4. And further in pursuance of said conspiracy and to effect the objects thereof, at the Middle District of Pennsylvania and within the jurisdiction of this Court, beginning on or about the 24th day of April, 1942, and continuously thereafter to the date of the filing of this indictment, the defendant Donald M. Johnson and the confederate J. Donald Reifsnyder did maintain certain memoranda.

5. And further in pursuance of said conspiracy and to effect the objects thereof, at the Middle District of Pennsylvania and within the jurisdiction of this Court, on or

about the 9th day of July, 1943, the defendant Robert Michael filed in the United States District Court for the Middle Judicial District of Pennsylvania an account designated "First and Final Account of Robert Michael, Successor Trustee."

6. And further in pursuance of said conspiracy and to effect the objects thereof, at the Middle District of Pennsylvania and within the jurisdiction of this Court, on or about the 24th day of April, 1942, the defendant George F. Fenner, Sr., received a sum of approximately Five Hundred Dollars ($500.00).

7. And further in pursuance of said conspiracy and to effect the objects thereof, at the Middle District of Pennsylvania and within the jurisdiction of this Court, on or about the 26th day of April, 1942 the defendant Donald M. Johnson received the sum of approximately Twenty Five Hundred Dollars ($2500.00).

All contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

(s) M. H. Goldschein,
Special Assistant to the Attorney General.

III.

THE EVIDENCE

Scranton, Pa., Tuesday, October 16, 1945

Before: Hon. William F. Smith, U.S.D.J., and a Jury.

Appearances

John S. Pratt, Esq., and Ben Brooks, Esq., Special Assistants to the Attorney General; Alphonsus Casey, Esq., and Arthur A. Maguire, Esq., Assistant United States Attorneys, Representing the Government.

Charles J. Margiotti, Esq., and V. J. Rich, Esq., Representing Defendant Donald Johnson.

J. Julius Levy, Esq., and Michael Kivko, Esq., Representing Defendant Harry S. Knight.

Otto P. Robinson, Esq., representing Defendant George L. Fenner, Sr.

R. L. Coughlin, Esq., Representing Defendant Homer N. Davis.

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* * * * * * * * * * *

(T. 157):

THE COURT: All right, Mr. Pratt, you may proceed.

MR. PRATT: Mr. Unangst, take the witness stand.

EDWARD R. UNANGST, called and sworn on behalf of the Government, after being duly sworn, testified as follows:

Direct Examination

BY MR. PRATT:

Q. Will you state your name, please?

A. Edward R. Unangst.

Q. Mr. Unangst, where do you live?

A. Catawissa.

Q. And what is your occupation?

A. I am cashier of the Catawissa National Bank.

Q. How long have you been cashier of that bank?

A. Oh, 15, 16 years.

Q. And do you recall events that took place at that bank of yours, the Catawissa National Bank, on the 24th of April, 1942?

A. I do.

Q. Do you recall at what time the events took place which are referred to?

A. It was late afternoon.

(T. 158)

Q. And in that connection did you see this check which I am handing you, which is not yet identified as an exhibit?

A. I did.

MR. MARGIOTTI: That is G-3-B?

MR. PRATT: I would like to have it identified. This is a check payable to Mr. Unangst.

MR. MARGIOTTI: I beg your pardon.

MR. PRATT: It is a new exhibit entirely.

THE COURT: Let it be marked for identification.

(Exhibit G-5 marked for identification.)

MR. PRATT: This is a check to Mr. Unangst for $225.

MR. KIVKO: May I see it for a minute, please?

(Exhibit handed to Mr. Kivko.)

Q. On that day, on April 24, 1942, did you receive this check, Mr. Unangst?

A. I did.

Q. And there were other transactions at the same time, were there not?

A. There were.

Q. Will you state, please, who was present on that occasion?

A. Mr. Michael and his attorney, Mr. Reifsnyder, Mr. Fenner and Mr. Davis.

Q. How did they arrive at the time, do you know?

A. I do not know.

Q. And when they arrived there this check was handed to you by one of them?

A. Right.

(T. 159):

Q. Do you know which of these men handed you this check?

A. I could not testify to that, just which one it was.

Q. And what was the purpose of this check for $225?

A. That was for my services as escrow agent.

Q. In connection with what?

A. The purchase of the assets of the Central Forging Company by the Maxi Manufacturing Company.

Q. And this check was then later endorsed by you and cashed — went through the bank, did it not?

A. Yes.

MR. PRATT: I offer this in evidence, if the Court please, Exhibit G-5.

MR. LEVY: I object to the answer given by the witness as to the purpose, services as escrow agent.

THE COURT: Let me hear the question and answer, please.

(The reporter read as follows:

"Q. And what was the purpose of this check for $225?

"A. That was for my services as escrow agent.

"Q. In connection with what?

A. The purchase of the assets of the Central Forging Company by the Maxi Manufacturing Company.")

MR. LEVY: That answer we ask to have stricken out.

THE COURT: Why?

MR. LEVY: Because of the conclusion by the witness. The escrow agreement, in the first place, would

(T. 160):

be the best evidence and, secondly, there was no purchase here by the Maxi Company of the Central Forging Company's assets. There is evidence offered by the Government which shows a plan which is a merger and not a purchase.

THE COURT: And the ground of your objection?

MR. LEVY: The ground of my objection is that the witness is assuming a fact not in evidence, first; secondly, he is stating a legal conclusion; and, third, the paper which he refers to is the best evidence as to what was in it.

THE COURT: The objection is overruled. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed) U.S.D.J.)

(Exhibit G-5 received in evidence.)

MR. PRATT: This check, ladies and gentlemen, is like the others that have been submitted to you, so far as the form is concerned, it is a check of the Maxi Manufacturing Company signed by F. Max Long as President and H. N. Davis as Treasurer, payable to Edward R. Unangst, in the sum of $225, drawn on the Catawissa National Bank, with the endorsement of Mr. Unangst on the back and the perforation showing it was cashed, or went through the bank on the 25th of April, 1942.

(T. 161):

Q. On that same occasion, Mr. Unangst, I will ask you if you saw this check, which I am handing you, which is marked Government's Exhibit G-3-B?

A. I did.

Q. What, if anything, did you have to do in connection with this check?

A. The check was handed to me by one of the parties and I cashed the check.

Q. And when it was handed to you did it bear the endorsement on the back "George L. Fenner"?

A. Yes.

Q. Are you familiar with Mr. Fenner's handwriting, his signature?

A. I have seen his signature before.

Q. And what do you say as to whether this is his signature?

A. I wouldn't testify to that.

Q. You cashed the check at that time, did you not?

A. Yes.

Q. And you have said that Mr. Fenner was then personally present?

A. Yes.

Q. In cashing the check what did you do? Where did you go from the company of these gentlemen?

A. I went into the vault to get the currency.

Q. And where was this meeting being held in your bank?

A. In the directors' room.

Q. And you went into the vault and what did you do then?

A. I got the currency and took it out and placed it on the table.

Q. Did you hand it to any one in particular?

A. I can't

(T. 162):

recall that I did.

Q. In what form was this $3,000 that you took in and put on the table?

A. I do not recall.

Q. Now, will you look at the perforation on this check, which indicates the date when the check was actually charged against the account of the Maxi Manufacturing Company, does it not?

MR. ROBINSON: I object to that question, your Honor, it is not the best evidence, assuming a fact that is not in evidence but one that is charged to the Maxi account — is one in the Maxi account in that bank, and the check speaks for itself. What perforations are on there I object to counsel testifying to.

THE COURT: The objection is overruled. Are we going to argue about trivialities and must we bring everything in the bank here? The check does speak for itself and like any check I imagine it carries a date, too, doesn't it?

Q. Does the perforation show a date when the check was charged?

A. Yes, the 25th of the month.

Q. And the occasion which you have testified to, the transactions, were on what date?

A. 24th.

Q. Can you state from the custom of the bank how it appears that the perforation names the next day?

A. Well, when that check was cashed our cash had been counted, the

(T. 163):

books were closed for the day and, therefore, it didn't go in until the next day's business.

(T. 224):

ROBERT MICHAEL, called and sworn on behalf of the Government, after being duly sworn, testified as follows:

MR. LEVY: If your Honor please, I am going to make this objection.

(As side bar.)

MR. LEVY: I am going to make this objection in the face of a ruling made by the United States Supreme Court in an opinion by Justice Clark, but I believe that we ought to raise this objection despite that ruling, and the objection is as follows: Counsel for Harry Knight, George Fenner and Homer Davis object to the competency of the witness, Robert Michael, because he has been adjudged guilty of a crime injuriously affecting by falsehood and fraud the administration of justice, and in the judgment of conviction the Court found the witness guilty of perjury; and for the purpose of proving his disqualification to testify we offer in evidence the

(T. 225):

record of the conviction and sentence in the office of the Clerk of the United States Court for the Middle District of Pennsylvania in the case of the United

States of America v. Robert Michael, No. (blank) C.D. and specifically the Government's motion or petition charging the defendant Robert Michael with perjury and crimes otherwise injuriously affecting by falsehood and fraud the administration of justice before the United States Grand Jury then and there sitting, the opinion of the Court finding the said Robert Michael guilty of perjury and such other crimes and offenses, and the sentence of the Court constituting the judgment of conviction, and the judgment of the Circuit Court of Appeals for the Third Circuit affirming the judgment of the Court below.

There being no federal statute regulating the subject, we ask the Court to now determine that the common law existing in the State of Pennsylvania at the time of the enactment of the Judicial Act of 1789, that the common law disqualifies witnesses who were convicted of crimen falsi was infamous.

Now, I want to recall to the Court that Justice Clark did say that the Judicial Act of 1789 in this regard is a dead hen, but I want to call to the Court's attention that this is a perfect case of where a man had (T. 226):

appeared time and again before the Grand Jury and time and again, apparently, committed perjury, as the Court points out in his opinion, and time and again attempted to thwart the administration of justice; and to permit him now to take the stand to tell some other, different story and to submit that to a jury on the question of credibility is highly unfair so far as these defendants are concerned and clearly prejudicial. And in addition to the unfairness and prejudice ought

not to be, he had already foresworn himself and any oath that he may take and any testimony that he may give goes not to his credibility any more, not to any weight of his credibility, but to the very inherent fact of his testimony and the very facts in this case because in this very case and on these very facts that he foresworn himself.

THE COURT: The defendant in this case was heretofore adjudged by this court guilty of—

MR. LEVY: May I correct the Court? You mean Mr. Michael.

THE COURT: Strike it all. The present witness, Robert Michael, was heretofore adjudged in contempt of this court, the court having found that his testimony given before the Grand Jury was false and obstructive. The witness, however, has not been convicted of perjury, although adjudged in contempt. However, assuming that

(T. 227):

he was, as an incident to adjudication and contempt, also adjudged guilty of perjury, this adjudication would in no way, in the opinion of this Court, disqualify the witness. The objection urged by counsel is overruled and an exception may be noted on the record.

MR. MARGIOTTI: As to all defendants?

THE COURT: As to all defendants.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U.S.D.J.)

Robert Michael—Direct

Direct Examination

BY MR. PRATT:

Q. Will you state your name please?

A. Robert Michael.

Q. Mr. Michael, you are one of the defendants in this present indictment, are you not?

A. That is correct.

Q. And you have pleaded guilty?

A. That's correct.

Q. Where do you live?

A. I live in Clarks Summit, Pennsylvania.

Q. That might be called a suburb of Scranton?

A. Yes.

THE COURT: Clarks Summit might resent that.

MR. MARGIOTTI: Scranton might be the suburb of Clarks Summit.

Q. How long have you lived at Clarks Summit, Mr. Michael?

A. Well, I lived there for the last three years to the present time. I lived there as a child, I grew up there.

Q. That was your childhood home, was it?

A. That's

(T. 228):

correct.

Q. I think you have said that technically it isn't Clarks Summit at all, it its Clarks Green, is that right?

A. My present residence is really Clarks Green but the same post office serves both municipalities.

Q. The two municipalities adjoin, is that right?

A. That's right.

Q. How old are you?

A. Forty-two.

Q. And are you a native of Pennsylvania?

A. I am.

Q. You lived here all your life?

A. Yes.

Q. Now, during the year 1942 what was your occupation?

A. Part of that year I was manager of the Scranton Country Club.

Q. When did you become the manager of the Scranton Country Club?

A. April the 1st, 1935.

Q. The Scranton Country Club is also at Clarks Summit, is it not?

A. Yes. It is not within the borough limits but the mail address is Clarks Summit, a short distance outside the borough limits.

Q. And you continued from the time you took charge of the club as manager until what time?

A. October the 1st, 1942.

Q. Now, during that period that you were manager of the country club you became, did you not, by appointment of the United States Court for this District the trustee of the Central Forging Company?

A. I did.

(T. 229):

Q. When did you first learn that there was such a concern as the Central Forging Company?

A. Well, it would be late in the year of 1941. I can't place the date as to any specific time but it was along in November or the early part of December, 1941.

Q. Who first directed your attention to that concern?

A. Donald Johnson.

Q. And do you refer to the defendant Donald M. Johnson?

A. I do.

Q. How long have you known Mr. Johnson?

A. Oh, I would say from about 1935, 1936.

Q. And what was the nature of your acquaintance with him? Was it a business acquaintance or a social acquaintance?

A. Well, I would say social. I gradually got acquainted with him and knew him better as time went on.

Q. Was he a member of the Scranton Country Club during any of the period of your official connection with that club?

A. Yes, he was.

Q. You knew him there did you?

A. I did.

Q. Aside from your acquaintance at the club did you have any social contact with him?

A. Well, yes, I have visited at his home and he has visited in mine.

Q. And there was some acquaintance between your families, was there?

A. There was.

Q. Now, you stated a moment ago that your first knowledge,

(T. 230):

or your first information regarding the Central Forging Company came from Donald Johnson. Where was this conversation which brought that out?

A. I can't state exactly, it is not clear in my mind; it

probably would be at the club, probably would have happened downtown, we had lunch together, or something, or it might have been on the street. I am not definite as to that.

Q. Where did Donald Johnson live at the time of this conversation, if you know?

A. Well, he lived out in what is known as the Green Ridge section.

Q. Of Scranton?

A. Yes.

Q. Where does he live now?

A. Middleburg, Pennsylvania.

Q. And do you know when he moved from Scranton to Middleburg?

A. Well, that is not quite clear, but it was about that time, the latter part of 1941.

Q. Have you ever been to his home at Middleburg?

A. Yes, I have.

Q. Do you know whether he had an office there?

A. Yes, he had an office.

Q. In connection with the practice of law, was it?

A. That's correct.

Q. Now, coming back to this conversation again that you had with him, as you say, late in November or early December, 1941. Will you state, as best you can recall, the substance

(T. 231):

of that conversation?

A. Well, he informed me that there was going to be a change in the trustee, Mr. Walter Compton, and that it would be necessary for a new trustee to be appointed.

Q. Are you referring to the Central Forging Company?

A. I am. And that it might be something that I would be interested in.

Q. And what further was said by you or by him?

A. Well, then I said that I would look into it, and he told me, advised me to contact his father, Judge Johnson; which I did.

Q. And Judge Johnson was one of the Judges of this court at that time?

A. That's correct.

Q. You say you did contact Judge Johnson?

A. I contacted Judge Johnson and had a meeting with him. Then I—

Q. Go ahead.

A. Then I went down to look over the Central Forging Company which was located at Catawissa.

Q. With whom did you go to see the plant?

A. I went alone, so far as I can remember.

Q. What were you doing down there at the plant?

A. I simply looked the plant over, had a talk with the men who were operating it at the time, the Longs, and—

Q. What are their names?

A. Well, there is Fred Long, Sr., and then there is Max Long, or Maxie Long he is called, he is the son of Fred Long, and then there is Homer Davis, the son-in-law, who was also working.

(T. 232):

Q. You say they were operating this plant?

A. That's correct. Mr. Long was the superintendent in charge of it.

Q. On whose behalf were they operating the plant?

A. They were operating it for Walter Compton, the trustee at that time.

Q. He was the trustee in Bankruptcy appointed by the Court?

A. That's correct.

Q. Now, after you had looked the plant over what did you then do?

A. I came back to Scranton and contacted Judge Johnson and told him that I would like to be appointed trustee and was interested.

Q. Now, were you then appointed trustee?

A. I was appointed trustee, yes. It was to take effect as of January the 1st, 1942.

Q. I direct your attention to an exhibit in evidence in this case, Exhibit G-1-B entitled, "Order Appointing Trustee." Did you have that, or a copy of that document?

A. Yes, I had probably the original of that.

Q. And this is an order which appointed you trustee, an order entered December 27, 1941, appointing you trustee to fill the vacancy caused by the vacancy of Walter H. Compton, Esq., the appointment effective January 1, 1942?

A. That's correct.

MR. MARGIOTTI: What was the date of that, Mr. Pratt?

(T. 233):

MR. PRATT: It was filed on December 27, 1941.

Q. Now, after you received this formal appointment did you take charge of the assets of that company as trustee?

A. I did. I went to the Central Forging Company, Walter Compton was there at the time, and we negotiated,

or he turned over to me, officially, the assets of the Central Forging Company.

Q. When was that?

A. Well, it was first legal day after the first of the year. As the 1st of January is a legal holiday it probably would have been the 2nd; if the 2nd fell on Sunday it was probably the 3rd.

Q. Anyway, you took possession under the authority of this order?

A. I did, on the first legal day following.

THE COURT: By the first legal day do you mean the first business day of the year?

THE WITNESS: I do, because we had to go to the bank on that day and so it had to be the first day that the bank was open after the first of the year. I haven't checked it so I can't tell for sure exactly whether it was the 1st, 2nd or 3rd.

THE COURT: All right.

Q. Now, upon your becoming trustee and having taken possession of the assets of the company in accordance with the Court's order, did you have any further conversation about that time with the defendant Donald M. Johnson?

A. Yes, I

(T. 234):

had a meeting with him, the date I cannot definitely say, it was approximately at that time, in which the matter of appointing an attorney for the trustee was discussed.

Q. Who brought up that question?

A. That I couldn't be sure of but—it could have been either one of us—but the conversation as it moved on, it

was suggested to me by Mr. Johnson that I appoint Donald Reifsnyder due to the fact that he had had considerable bankruptcy experience and he thought would make a very fine lawyer for the trustee.

Q. Well, it was understood that it was necessary for you to have an attorney as trustee?

A. Yes, it was.

Q. Where was this conversation with Donald Johnson?

A. That I am unable to state definitely, it could have been at the country club, it could have been in town here or any place where we commonly met or were apt to meet.

Q. Did you commonly meet anywhere other than in Scranton or at the country club?

A. I wouldn't say commonly met but we would meet, not out of town, I mean by that I am localizing it here in Scranton or at the country club.

Q. Now, after the suggestion was made that you select Donald Reifsnyder as your attorney, what did you do, if anything?

A. I went to see Mr. Reifsnyder in his office in the Scranton National Bank Building.

Q. Do you recall when that was?

A. Not definitely, but it must have been right after I got my appointment and after I

(T. 235):

had talked to Donald Johnson in regard to it.

Q. And was it after you had taken possession of the assets of the company as trustee?

A. My best recollection is that it was.

Q. You then had a conversation with Donald Reif-

snyder on the subject of his appointment as attorney for the trustee?

A. I did. I asked him if he would serve.

Q. Donald Reifsnyder, if I misspoke.

A. That's right. I had a conversation with Mr. Reifsnyder in his office.

Q. What was the substance of that conversation?

A. Well, I asked him if he would like to serve as the counsel, as my counsel as trustee in the Central Forging Company, and he stated that he would. The only thing was that he wanted to take it up first with the senior partner of the firm, Mr. Stark, and that he would serve but in the meantime, as he said, "I think it will be all right but I would want to consult with him first. But if in the meantime there are any legal questions that might arise that you would want to consult me, feel free to do so."

Q. Did you see him later and secure an acceptance of the appointment suggested?

A. Yes, I was in his office and talked with him on several occasions even before he had applied for an appointment as attorney for the trustee.

Q. Now, I direct your attention to this exhibit in evidence, which is marked Government's Exhibit G-1-C, which (T. 236):

is entitled, "Petition for Appointment of Attorney for the Successor Trustee," and order.

A. Yes; this is the petition which was drawn up by Donald Reifsnyder and signed by myself, as trustee, requesting that Mr. Reifsnyder be appointed for the trustee.

Q. And the signature "Robert Michael, Trustee," is that your signature?

A. That is my signature.

Q. And following that in order in this paper, this exhibit, is the request, an affidavit of Donald Reifsnyder—and is that Donald Reifsnyder's signature on the last page?

A. I say it is.

MR. PRATT: If the Court please, I would like to summarize this document to the jury without reading it all.

MR. MARGIOTTI: We have no objection, go ahead.

THE COURT: All right.

MR. PRATT: This is an order signed by Albert W. Johnson, District Judge. It was filed on January 19, 1942. It is dated at Scranton on the 24th day of January, 1942. As I say, there is a file mark of January 19.

"Upon the annexed petition of Robert Michael, trustee of Central Forging Company, the above named debtor, verified the 24th of January, 1942, praying for authority to appoint Donald Reifsnyder to represent him as trustee in this proceeding," and so forth—I am (T. 237):

omitting quite a little of it— "ordered that Robert Michael, as trustee of said debtor, be and he hereby is authorized to employ and appoint Don Reifsnyder, an attorney at law, to represent him in this proceeding," and so forth. That is the order. The annexed papers referred to are the petition signed by Mr. Michael in which he states that he "was appointed trustee and has qualified and that by reason of the perplexity of the matter in hand your petitioner wishes to employ an attorney," and then he goes on to suggest

Mr. Reifsnyder as the proper person, giving some account of Mr. Reifsnyder's qualifications to act in that capacity. And then follows an affidavit by Mr. Reifsnyder in which he says that he is an attorney practicing law here in Scranton, that he is not a creditor of the Central Forging Company and that he had no relationship to that company in any way. It is a document with a number of paragraphs. Principally it states that he is not connected in any way with the debtor, the Central Forging Company, or the creditors or any other party in interest. And that is sworn to before a notary.

Q. Now, I observe, Mr. Michael, that the oath of Mr. Reifsnyder's on this paper is dated the 16th of January, which is three days before the formal filing of the document in court. When did Mr. Reifsnyder commence to perform services
(T. 238):
for you as trustee?

A. Well, I would say that he started to advise me as an attorney at the time that I, or shortly thereafter, that I took over the property. But of course he couldn't have officially represented me until he was officially appointed.

Q. But he did advise you previous to that?

A. That is correct.

Q. Now, at any time did Mr. Reifsnyder go with you to the plant of the Central Forging Company at Catawissa?

A. Yes, he went on numerous occasions.

Q. Now, in connection with your functions, your duties as trustee, I will ask you whether you and your attorney had any conference with Mr. Harry S. Knight.

A. Yes, we did.

Colloquy

MR LEVY: One minute, please. Now, if your Honor please, I would like to ask for an offer from the Government. I think this goes to the very crux of this lawsuit and I would like to have an offer made and an objection—if necessary.

THE COURT: An offer as to proof as to whether or not he ever had any conversation with him?

MR. LEVY: No, but I am afraid that they are now going into the question of all of the conversations and other things and I would like to have an offer on that.

MR. PRATT: I am unable to hear counsel.

MR. LEVY: I say I would like to have an offer.

(T. 239):

THE COURT: He is requesting an offer of proof, but I don't know on what theory an offer of proof is necessary here, Mr. Levy.

MR. LEVY: What I want the Government at this stage of the game to do is to offer, to make an offer of what they intend to prove by the witness on the stand in reference to any conversations that he may have had with Mr. Knight or in reference to any conversations in reference to this plan of reorganization.

THE COURT: Well, of course that broad request at this stage of the proceedings would require Mr. Pratt to give to us at this time a comprehensive summary of the witness's testimony. Your request for an offer of proof is denied. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U.S.D.J.)

THE COURT: Read the question, Mr. Barrows.

(The reporter read the last question and answer.)

Q. You answered, did you?

A. Yes, we had many conferences with Mr. Knight.

Q. And do you recall when you had the first conference?

A. The first conference took place on January the 23rd, 1942.

Q. Before that conference had you and your attorney, Mr. Reifsnyder, discussed the proper solution of the difficulties

(T. 240):

of the Central Forging Company?

A. Yes, we had gone over it at quite some length and the best recollection that I have is that Mr. Reifsnyder made at least one trip to Catawissa in my company before we had the meeting with Mr. Knight and at which we had discussed at some length with Mr. Long and his assistants the proposition of merging the two companies.

Q. This was at Catawissa?

A. This was at Catawissa.

Q. And previous to your talk with Mr. Knight?

A. Yes. And of course I had many meetings with Long when I wasn't accompanied by Mr. Reifsnyder.

Q. Now, on this occasion, on the 23rd of January when you went to call on Mr. Knight, had you made an appointment in advance with him?

A. Yes, we had.

Q. By what means?

A. I think Mr. Reifsnyder called him on the telephone but he might have written to him.

Q. And where was this conference of July 23rd?

A. It was held in the law office of Harry Knight in Sunbury.

Q. At Sunbury. And you and Mr. Reifsnyder went together, did you, Mr. Michael?

A. That's right, we went together really at the suggestion of Mr. Long, Sr., who had stated to us that, well, they had expressed willingness to merge the two companies. However, he said, "I think you ought to go down and talk with our attorney in this matter, Mr. Harry Knight."

Q. Now, when you got to Mr. Knight's office on that date, what, if any, discussion did you have with him in regard to

(T. 241):

the possible taking over of this Central Forging Company by his client, Maxi Manufacturing Company?

A. Well, we were there a considerable time, I would say we were there probably two to four hours and we listened to Mr. Knight considerably as he outlined what had taken place in the proceedings before, the other legal entanglements which the company had been in.

Q. Was there a discussion of the fact that there had been a previous effort to reorganize the Central Forging Company?

A. Oh, yes, he went into Mr. Compton—Mr. Compton the previous trustee, had proposed a plan which had been defeated by the bondholders, or the creditors. He had a copy of that plan, as I remember, and we went over it. In other words, we went over the background, first, and we were informed as to what had happened and then we started to discuss elements of the new plan.

Q. You say this was a very long conference?

A. Yes, it took all afternoon, I would say.

Q. Now, was anything said by Mr. Knight as to whether he would give you some formal proposal?

A. As I remember the meeting, at the end of it he said he saw no reason why a plan could not be worked out and that upon consultation with his client, namely, the Longs, that he would draft a formal proposal; that is, somewhat of a formal proposal which he would mail to us.

Q. Now, he represented the Maxi Manufacturing Company,

(T. 242):

did he not?

A. Yes, he did, as well as the Longs, of which, of course, the Longs are the Maxi Manufacturing Company for all practical purposes.

Q. Now, you have stated that the Longs were operating the plant of the Central Forging Company on behalf of the trustee, your predecessor. Did you continue them when you became trustee?

A. Yes, I did.

Q. Now, tell me, where was the Maxi Manufacturing Company located?

A. That was also located in Catawissa.

Q. Were they nearby?

A. Well, they were nearby as far as the size of Catawissa is concerned, however, they are not adjacent and I would say from a matter of distance it probably was a half a mile apart.

Q. By the way, Mr. Michael, what was the business

of the Central Forging Company? What was their product?

A. They were manufacturers of fittings, unions, steel unions and valves. They are a high pressure valve for use in steam lines and oil lines.

Q. And what was the business of the Maxi Manufacturing Company? What was their product?

A. It was similar; identical, you might say, except that certain operations were perfected in the Maxi Company.

Q. So I understand the Longs were operating both companies?

A. That's correct.

Q. Now, after this conference in the office of Mr. (T. 243):
Knight on the 23rd of January did you receive from him, you or your attorney, a formal letter making a proposal?

A. Yes, we did, and that letter, I think, is dated from Mr. Knight's office as of January the 29th, 1942. And we undoubtedly, having received it by mail, got it the next day.

Q. Now, I show you Government's Exhibit in evidence G-2-A, a carbon copy of a letter dated January 29, addressed to Don Reifsnyder, Esq., Scranton National Bank Building, Scranton. Will you look at that and state, if you can, whether the original of that letter came to your attention?

A. (After examining): Well, either the original or the carbon copy which was enclosed with it. I am familiar with the contents of this proposed plan.

Q. I notice that a postscript of the letter says, "I en-

close a carbon copy of this letter which you may want to hand to Mr. Michaels."

A. I got it, either one of those copies, I am not sure which one it was, but I remember the letter coming, I am aware of its contents.

Q. Did you and Mr. Reifsnyder discuss the contents of this letter between you?

A. Oh, yes, yes.

Q. To what extent?

A. Well, that was really the basis of the plan that eventually was put through. That was the basis of our argument or our discussion.

Q. That was the starting point, was it?

A. That was the beginning, yes.

(T. 244):

MR. PRATT: I would like to read this letter to the jury, if the Court please.

(Addressing jury): "January 29, 1942

Don Reifsnyder, Esq.,
Scranton National Bank Building,
Scranton, Penna.

Dear Mr. Reifsnyder:

Re: Central Forging Company

I spent all of Wednesday afternoon with the officials of the Maxi Company to ascertain whether or not they would be interested in paying anything to acquire the Central Forging Company. There is a decided division of opinion among these people as to whether or not they should invest anything in the

Central. Finally it was agreed to make the following proposition:

(1) That they will pay to you in cash the sum of $17,000 for a clear and unencumbered title to the land, plant, machinery and equipment and all assets of every kind and character except accounts receivable, cash, goods in process, goods finished, and raw material, and will waive its (Maxi Company's) claim to participate in the bonds of the Central Forging Company now held by the Maxi Company, aggregating $21,300.

(2) This proposition is made upon the condition that it be promptly accepted, and that the legal

(T. 245):

machinery to carry it into effect be promptly started.

(3) That if accepted, the plant be kept operating as heretofore until it can be taken over by the purchaser; the details of how this is to be done and at the same time liquidate the current assets for the payment of expenses, to be worked out between the Maxi and the Trustee.

Maxi now has a plan to do this, which can be submitted at the proper time.

(4) If accepted, of course, the Maxi and Mr. Fred Long and Mr. Max Long would continue to cooperate in operating the Central as heretofore.

As to the supplies now on hand, it is understood that certain of these supplies will be consumed during the course of operation by the Trustee until a sale and

delivery could be consummated. If any of these supplies remain unused at the time of the consummation they are to be included for the sale price. If at the time of the consummation there is any inventory on hand, the purchaser will arrange to take it over at cost to the Central Forging Co. This in addition to the purchase price above mentioned.

Our calculation is that the amount that we would pay in would be sufficient to pay to the bondholders, outside of the bonds held by Maxi, a dividend of 20%, and

(T. 246):

would leave over 5 to 8% to pay on the unsecured creditors, in addition to all of the expenses.

The audit was not completed when I was in Catawissa. From the work sheets Mr. Davis furnished the following statement of current assets and current liabilities:

Current Assets:

Accounts receivable	$21,812.69
Cash in bank - overdraft	123.14
Inventory:	
Supplies	$5,054.21
In Process	13,947.97
Finished	6,393.49
Raw Material —"	

Five thousand-odd, or a total of inventory of $30,386.61, or a total of current assets of $52,376.16.

Reading—Exhibit G-2-A

"Current Liabilities:

Assigned accounts	$9,600-odd
Accounts payable	8,500-odd
Social Security Tax	1,355
Pay Roll	3,397,

or a total of liabilities of 22,953.05, and net current position January 1, 1942, $29,423.11.

I am informed by Mr. Davis that upon a collection and liquidation of these assets they would produce the

(T. 247):

amount set out in the statement, so that there would be no shrinkage.

I am informed, also, that while this statement is of January 1st, 1942, that there would be no material difference in the current position from month to month over a period of a few months—that is, there might be in the next month less inventory but it would reflect itself in greater receivables; and the receivables might become less, which would reflect itself in the cash, and cash used to pay the payables, so that the net would remain about the same.

The printed plan of Mr. Compton shows there are priority claims of $1,080. There is payable as expenses to what might be called the Beckley or Smith crowd, allowed by the Federal Court $2500.: Add to these last two items a very rough estimate of the expenses, we would have a total of not to exceed $20,000 or $21,000; so that all of these could be paid out of the

net current without even using any of the supplies, and have a few thousand dollars left.

I am strongly inclined to the opinion that the only procedure to be followed in order to accomplish the sale as above proposed would be to have a prompt adjudication in bankruptcy, and then a petition to sell at private sale, and before this it would be necessary, or (T. 248):

at least expedient to agree with the Bondholders' Committee that they would accept this amount, or approximately the amount, and have them agree by a power of attorney to vote for Mr. Michaels as Trustee, at least in so far as their claims are unsecured, and then have Mrs. Beckley and the other small unsecured creditors agree to a sale such as above and to vote for Mr. Michaels as Trustee.

So far as any claims which the Maxi Company could control are concerned, I would be willing to have them vote for Mr. Michaels as Trustee.

I am laying this before you promptly as per my promise so that if it appeals to you, you can take it up promptly, which will be necessary under the offer.

I shall be absent from my office on Friday and Saturday of this week, and on Wednesday and Thursday of the following week. If at any time you desire to confer with me you had better call me on the telephone before coming here.

Very truly yours,

Harry S. Knight"

And the postscript, "I enclose a carbon copy of this letter which you may want to hand to Mr. Michaels."

THE COURT: It is a little early, but this might be a good point at which to take our morning recess. The jurors can retire.

(T. 249):

(The jury retired.)

THE COURT: You may step down, Mr. Michael, and while off the witness stand I request that you not discuss the case with anybody.

(Short recess taken.)

THE COURT: All right, Mr. Pratt.

BY MR. PRATT:

Q. Mr. Michael, previous to this conference that you had with Mr. Knight on the 23rd of January had you ever met Mr. Knight?

A. No, I had not.

Q. And do you know whether Mr. Reifsnyder was acquainted with him?

A. I don't think that he had ever met him personally. I am sure he hadn't because of my knowledge at the time we met, he introduced himself. Of course he knew of him.

Q. Now, up to the time that you were appointed trustee had you any acquaintance with Homer Davis, the defendant in this case?

A. No, I didn't know him.

Q. When did you first meet him?

A. Well, it would be during the last week of December, 1941, when I made my first trip to the plant.

Q. You met Mr. Davis there, did you?

A. I did.

Q. And what was his job so far as the operations of the Central Forging Company were concerned, which as I understand

(T. 250):

it, had been conducted under the supervision of your predecessor, Mr. Compton, as trustee? What did Mr. Davis do in connection with that?

A. Well, I would call him a controller. He was in charge of the books and all other matters pertaining to the bookkeeping end of the business.

Q. And was he also in a similar capacity for the Maxi Manufacturing Company at that time?

A. Yes, he was and, as a matter of fact, I think he held the title of secretary and treasurer.

Q. You mean of the Maxi Manufacturing Company?

A. Yes.

Q. Now, previous to your appointment as trustee had you had any acquaintance with Mr. George Fenner, Sr., the defendant?

A. No, I didn't know Mr. Fenner.

Q. When did you first make his acquaintance?

A. I couldn't be definite as to the first day but I met him on one of my trips to the plant in the early part of the negotiations, and it could very well, it could very well have been the day that I took over from Mr. Compton.

Q. Did you know his connection with the Maxi Manufacturing Company at that time?

A. I was informed of it at that time and I was introduced to him.

Q. And what was his position with the Maxi Manufacturing Company?

A. My understanding was that he was the counsel of the Maxi Manufacturing Company.

Q. Do you know whether he was interested otherwise than

(T. 251):

as the attorney for the company?

A. Well, my understanding was that he had some stock in the Maxi Company.

Q. How did you secure that information?

A. Well, from word of mouth during the meeting or during the talks that we had.

Q. Now, following the receipt by you and Mr. Reifsnyder of Mr. Knight's letter of January 29th did you have further conferences with Mr. Knight?

A. Yes, we had many conferences.

Q. Who were present during these conferences?

A. Well, of course I can't state definitely, there were other people at some of them but always Mr. Reifsnyder and myself and Mr. Knight and, sometimes—I know of one case particularly—I remember Homer Davis being there.

Q. For how long a period did these conferences last?

A. Well, you are referring to the conferences pertaining to the plan?

Q. That's right.

A. They took place periodically up to the time of the submission of the plan, which was, if I recollect correctly, the 27th day of February.

Q. That's when the plan was filed, was it?

A. That's when we made application, formal applica-

tion to have the plan approved and submitted to the various interests.

MR. MARGIOTTI: When was that date?

THE COURT: February 27th.

(T. 252):

MR. PRATT: February 27th was the date of the filing of the plan.

Q. Now, during this period between the receipt of the letter of January 29th and the ultimate filing of the plan in court, do you recall specifically any dates of conferences that you had with Mr. Knight?

A. Well, we always went down on a Friday and I think we went down every Friday, so you could say we had a conference with Mr. Knight subsequently on every Friday.

Q. Why Friday?

A. I am not quite clear on that, but as I recollect it, I think it was due to the fact Mr. Reifsnyder—it was more convenient for him to leave his office on a Friday. That was the reason we subsequently went down, or always, I am sure it was always on a Friday. However, I went down other times in the early part of the week. However, I never went to Mr. Knight's office except in the company of Mr. Reifsnyder. I would stop at Catawissa for such business as was to come up.

Q. And do you remember the date Friday the 13th of February, 1942, as having been there?

A. Yes, we went to Mr. Knight's office on February the 13th. We had a meeting in his office in which we talked over this plan and out of that plan, or after considerable

discussion in which we had worked the plan around in a little different form, not much, but got it fairly well set, Mr. Reifsnyder and I then left on a trip

(T. 253):

to Harrisburg where we had made an appointment to meet with the Bondholders' Committee, which had been set up and had been in existence for some time.

Q. Do you remember what time you left Sunbury to go on to Harrisburg?

A. It was around 6 o'clock because we got into Harrisburg, it was rather late. We had dinner and then we had an appointment with Mr. Wickersham and a Mr. Price.

Q. You had arranged—

A. We had arranged from Sunbury before we left that we would be able to meet with them, and we did, we went down there and had a meeting at which was discussed the acceptance by them, as the Bondholders' Committee, to approve this plan.

Q. Now, on return—by the way, you were driving, weren't you?

A. Yes.

Q. In whose car, do you recall?

A. I am not sure. I think it was Mr. Reifsnyder's, though.

Q. And you then returned from Harrisburg to Scranton, did you?

A. Yes.

Q. Do you remember what time you left Harrisburg?

A. It was late, I would say it was midnight or after.

Q. And in driving back did you stop anywhere on the way?

A. I don't recollect it, no.

Q. During the course of this drive from Harrisburg back to Scranton on the 13th day of February, 1942, did you have any conversation with Mr. Reifsnyder which in any wise brought

(T. 254):

the name of Donald Johnson into the talk?

A. Yes, we did.

MR. MARGIOTTI: Now, if your Honor please, at this time I object to the testimony for the reason there is nothing in the witness's testimony that there was any conspiracy formed or discussed or any evidence of a conspiracy or anything that would tend to show a conspiracy, and this conversation was between two persons to which the defendant Johnson was not a party. Now, under the evidence that has been produced here up to this very point there isn't a scintilla of evidence to show that conspiracy had its inception. Now, if we were to know when this conspiracy started then the conversations would be admissible.

THE COURT: The difficulty with that, Mr. Margiotti, is simply this; that in most conspiracies it is difficult to fix an exact date when the plan had its inception.

MR. MARGIOTTI: Well, that's true, your Honor, I agree with you.

THE COURT: But there is this testimony before the Court at this stage: that Donald Johnson first

approached this witness with reference to his appointment as trustee in the Central Forging Company.

MR. MARGIOTTI: That is correct.

THE COURT: And thereafter this witness, at the (T. 255):

suggestion of the defendant Johnson, approached Judge Johnson with reference to his appointment as trustee and his appointment as trustee thereafter followed. There is this further testimony from this witness: Shortly after his appointment he discussed with Donald Johnson the appointment of his counsel. Donald Johnson recommended Mr. Reifsnyder, whose appointment as attorney for the trustee likewise followed.

MR. MARGIOTTI: I agree with that, your Honor.

THE COURT: I want to avoid characterizing the nature of these meetings, but it strikes me that if there was a conspiracy, not passing on it, not encroaching in any way upon the exclusive prerogative of the jurors, it may well have had its inception at or about that time.

MR. MARGIOTTI: Well, it could have been, but the evidence is to the contrary, the evidence from the witness, and the Government is bound by this witness's testimony that there was nothing improper in the suggestion that was made by Donald Johnson to him, and that's the way most receivers are appointed, somebody makes the suggestion. There is a start some place.

THE COURT: Well, I don't want to pass on the propriety of it, what was done here, but from the rec-

ords before the Court up to this point there is no evidence

(J. 256):

that the defendant Johnson had any official connection with the pending bankruptcy proceeding.

MR. MARGIOTTI: That's correct.

THE COURT: There is no evidence that he represented any client, debtor or creditor, bondholders or stockholders. I don't know what brought him in, I don't care to say. I will overrule your objection. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U. S. D. J.)

MR. MARGIOTTI: All right.

MR. LEVY: If your Honor please, I wonder whether, in behalf of Mr. Knight, we ought not to make the same objection, but the additional reason: that the testimony would be highly prejudicial to Mr. Knight because in no way could he know of anything that may have happened prior, so far as this evidence shows, prior to this automobile ride from Harrisburg to Scranton.

THE COURT: Yes, but don't you see, Mr. Levy, your objection presents one further problem that is not difficult of solution. Assuming that what you say is true, and assuming now only for the purposes of this discussion, that the conspiracy had its inception at or about this time in January, your client didn't know a

(T. 257):

thing about it. If he joined in it at any subsequent date with knowledge of it and thereafter participated in it, he would become bound by the acts of all conspirators committed prior to his knowledge of it. However, I would reserve to counsel for each of the defendants the right to move to strike this testimony at a later stage if it should appear that there is no connection between these conversations and the alleged conspiracy. But, as Mr. Margiotti himself pointed out in chambers in our discussion preparatory to trial, in order of proof there has to be some beginning and it's really difficult in a criminal conspiracy case to establish the agreement except by circumstances and inferences. In other words, if men agree, and I am not again saying that there was any agreement here, if men agree to commit an offense they don't commit their plans to writing.

The objection is overruled and you may have an exception, as I said, reserving the right and the right of counsel for the other defendants to strike the testimony should it subsequently appear that the proposed testimony has no connection with the alleged conspiracy.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U. S. D. J.)

MR. LEVY: My only objection is that the objection,

(T. 258):

then, will not erase the prejudice that is now being created.

THE COURT: Yes, but I am afraid, Mr. Levy, that the type of objection that you make would very well render the proof of conspiracy impossible.

MR. ROBINSON: If the Court please, let the record show that I make a motion similar to that of Mr. Levy's.

THE COURT: Yes, the record may reflect that the objection originally urged by Mr. Margiotti on one ground, concurred in by Mr. Levy on another, is entered on behalf of each and all of the defendants. The objection is thus overruled and an exception may be noted on the record.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U. S. D. J.)

THE COURT: Mr. Barrows, you may read the question.

(The reporter read the last question and answer.)

THE COURT: You may proceed, Mr. Pratt.

Q. Will you state, as best as you can remember, the circumstances of that conversation?

A. Well, the conversation had its beginning due to the fact, while we had been in conference with the Bondholders' Committee in Harrisburg they had signified their willingness to go along on the plan of merger and accept—and turn their bonds in. In other words,

(T. 259):

on our way back we had largely accomplished what we had set out to do, and it looked like, at that time, that merger would go through. There was nothing at that time to stop it, and during his conversation Mr. Reifsnyder said, "Well, I suppose we have to talk about some way in which we have to take care of Donald Johnson." And I said, "What do you mean, splitting of fees?" And he said, "Well, I am not sure whether we have to do that or not. I have in mind another plan which would create a fund aside from the moneys which would be paid over, of course, in the form of allowances by the Court," and he said, "We could set up certain funds which would be paid over to a third party and then come back for disbursement to Mr. Johnson."

Q. Had anything been said previously to you by Mr. Reifsnyder in relation thus to Donald Johnson?

A. Not in regard to anything that would be on the plan. Of course, naturally, his name would crop up the same as many other people's names came into our conversations. But there was no, there was no intimation—there was no discussion after that time as to whether he expected to split his fee or any part of it. And I had not talked with him about doing it.

Q. Now, in regard to this plan that he said he had in mind whereby Donald Johnson might be compensated without it affecting your fees, did he say whether he had discussed that with anyone else?

A. Yes, I asked the question of him, I said,

(T. 260):

"Well, what do you think, will other people go along on it, after all, you are going to have to take other people in on it?" and he said, "Well—"

MR. LEVY: One minute. I object to what he said, it was not in the presence of any of these defendants.

THE COURT: No, I will let him answer it. The objection is overruled; you may have an exception.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U. S. D. J.

MR. MARGIOTTI: This is with Reifsnyder?

THE COURT: Reifsnyder.

A. He said that he had discussed it with Mr. Knight in his office that morning and that he was agreeable to going along on some proposition.

Q. Was anything said as to whether Donald Johnson had knowledge of the plan?

A. I can't remember whether he did or not, but my recollection is that he had, he gave—the impression I got from it is—

MR. MARGIOTTI: Wait a minute. We object to it.

THE COURT: Yes, don't give us your impression.

Q. We don't want your impression, we want to know what was said, if anything, relating to Donald Johnson's knowledge of such a plan or scheme.

A. I can't honestly say, then, at this time that Mr. Reifsnyder told me that he had talked it

(T. 261):

over with Donald Johnson.

Q. Now, how do you fix this date of February 13th as having been the time of this conversation?

A. Well, after I arrived back home I had thought the plan over considerably and I thought that before we

entered into it any further that I should consult with Donald Johnson. On the 18th of February I called him up at his Middleburg office.

Q. And where were you?

A. I was at the Scranton Country Club.

Q. Did you get him on that date?

A. I didn't get him on the 18th but on the 19th I placed another call and I talked to him. I asked him, in reference to this conversation with Mr. Reifsnyder, if he was aware of the plan.

Q. What did he say?

A. He said that he was, he was agreeable to it and he thought that that's the way it should be done.

Q. Now, following the conversation you have spoken of in the automobile on the 13th, and following also your telephone talk with Donald Johnson over the telephone—your talk with Donald Johnson on the telephone on the 19th of February—did you have further conferences at the office of Mr. Knight?

A. Yes, we had several conferences there and, as I would say, I think it was every Friday.

Q. You continued to go every Friday?

A. That's right.

Q. Now, just to go back for a moment. When you consulted

(T. 262):

Donald Reifsnyder on the subject of his becoming your attorney, you as trustee of this Central Forging Company, did he mention Donald Johnson's name or did you in any of those conversations?

MR. MARGIOTTI: That question is objected to because it is leading and suggestive. The witness has

already answered that question and he has given that conversation. If there was anything further I have no objection, but to mention Donald Johnson and go back to it is certainly a suggestion on the part of the Government.

THE COURT: No, I will overrule your objection. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U. S. D. J.)

MR. MARGIOTTI: All right.

A. The question again, please?

(Question read by the reporter.)

A. Yes, there was a mention of Don—Don Reifsnyder said to me that he had talked this over with Don Johnson and he expected me to approach him.

Q. Now, you have said that periodically, and on every Friday, practically, you and Mr. Reifsnyder called at Mr. Knight's office. What was the purpose of these further con-

(T. 263):

ferences?

A. Well, of course—

Q. What was said in substance?

A. Of course from the 13th on we had tentatively received the approval of all of the interested parties but there was still work to be done as to formulating the plan, which was done, the submission of it to the bondholders and certain other details more of a legal nature than anything else. Yet there was considerable, there was consider-

ble work needed to place a value on the various personal roperty that was going to be turned over.

Q. Now, I show you this paper, which is Government's xhibit in evidence, G-1-D, which is entitled, "Proposal of Revised Plan of Reorganization," filed in this court February 27, 1942. Do you recognize that as the plan that was led in court?

A. (After examining); Yes, this is the plan that was led in court and bears my signature.

Q. Bears your signature on the last—

A. Next to the last page in front of the court order pproving it.

THE COURT: What is the date of that again, Mr. Pratt?

MR. PRATT: This was filed on February 27.

THE COURT: 27th. All right.

MR. PRATT: 1942. I would like to read this to the jury, if the Court please.

(Addressing the jury): This entitled, "In the District Court of the United States for the Middle District of Pennsylvania, in the Matter of Central Forging Company, a Pennsylvania corporation, Debtor," with a number and designation.

T. 263-A):

"Proposal of a Revised Plan of Reorganization

Robert Michael, Successor Trustee of the Central Forging Company, the above named Debtor, proposes the annexed plan for the reorganization of said Debtor.

states to the Court that in the opinion of said Trustee the same is fair, equitable and feasible, and hereby seeks the approval of said Plan by the Court, pursuant to the provisions of Chapter X of the Bankruptcy Act, commonly known as the Chandler Act:

1. STATEMENT OF COMPANY'S LIABILITIES. All debts having priority have been paid to avoid accumulation of penalties and interest, or have been withdrawn as claims against the estate of the Debtor.

First Mortgage Bonds of the Debtor are outstanding to the amount of $97,500, excluding interest unpaid.

Unsecured debts filed and approved and which have been allowed by the Special Master, pursuant to the order of Court dated March 25, 1939, as set forth in the Trustee's original plan of reorganization, total $38,830.58, exclusive of interest.

Stock issues of the Debtor include Preferred Stock of $71,225.00, Common Stock of $102,570.00.

2. STOCKHOLDERS. Due to the adjudicated insolvency of the Debtor, there is no equity for stockholders and they have no

(T. 263-B):

right to participate in this or any other plan; and as part of this plan all stockholders will be required to return to the Trustee their certificates representing capital stock in Central Forging Company, and the Court will be requested without further notice to enter an order cancelling all capital stock of Central Forging Company.

3. CREDITORS TO BE AFFECTED BY PLAN. All the creditors of the Central Forging Company are affected by this plan, and the two classes as fixed by this Court are participating therein.

4. ACCRUED INTEREST. Since interest on all obligations has accrued from approximately the same time the inclusions thereof would increase the amount, but not the proportionate share of each creditor's benefits in the amount involved for the purposes of consummating this plan. Hence no interest is calculated or capitalized on any indebtedness.

5. MERGER WITH MAXI MANUFACTURING COMPANY, a corporation organized and doing business under the laws of Pennsylvania, is contemplated herein. All of the assets, claims, patents, rights, franchises, cash, receivables, and property of every kind, nature and description, including trade names, trade marks, advertising media, and good will, title and ownership to which is vested in the

(T. 263-C):

Central Forging Company and/or the Trustee and/or the Successor Trustee thereof under Chapter X of the National Bankruptcy Act commonly known as the Chandler Act, are by proper instrument or instruments good and sufficient in law to be transferred to and title and ownership thereof to become vested in the Maxi Manufacturing Company, its successors and assigns, as a going concern, free, clear and divested of all liens, encumbrances and claims of every kind and character upon the acceptance of this plan pursuant to law and compliance with the provisions thereof.

6. Payment of Secured Creditors of Central Forging Company, Debtor, i. e. the bondholders, is to be made as follows:

Upon the surrender of each $1000 par value bond of Central Forging Company, with coupons attached, there shall be issued a $200 par value general debenture bond of the Maxi Manufacturing Company, bearing interest at 5% per annum, to commence one month after the date of issue, and to be callable at any time after issue, at par and accrued interest. The acceptance of said debenture bond in exchange for said Central Forging Company bond shall be in full satisfaction of all rights of each such bondholder of the Central Forging Company, both as regards the secured and unsecured portion of each

(T. 263-D):

such Central Forging Company bond surrendered for cancellation, pursuant to this plan.

7. Payment of Unsecured Creditors of Central Forging Company, Debtor, is to be made as follows:

The Maxi Manufacturing Company will issue its general debenture bonds bearing interest at 5% per annum, commencing thirty days after issue, and callable at par and accrued interest at any time after issue in the par value amount of five per cent. of all unsecured claims approved and allowed against the Central Forging Company, Debtor, by the Special Master as of March 25, 1939, upon assignment of each of said claims to Maxi Manufacturing Company, or to its nominee.

Reading—Exhibit G-1-D

8. Property to be Dealt with by the Plan and Litigation to be Ended.

It is intended that all property, of every kind and character, and wheresoever situated, of the Debtor and its Trustee and Successor Trustee, will be dealt with by this plan, and transferred to the Maxi Manufacturing Company, and that the consummation of this plan shall be considered a settlement and discontinuance of all actions or rights of action against the Central Forging Company and its officers and or stockholders, or any of them.

9. Payment of Fees and Expenses of Receivership in the Equity Court of Columbia County, Pennsylvania, as allowed
(T. 263-E):
and approved by the United States District Court for the Middle District of Pennsylvania, shall be paid in full in cash by the Trustee aforesaid upon acceptance of the plan according to law.

10. All Taxes, Costs and Expenses of Reorganization and Administration as allowed by the United States District Court for the Middle District of Pennsylvania, as well as all expenses of consummating this plan of reorganization, shall be paid in cash by the Trustee aforesaid.

11. Additional Means for Execution of the Plan.

In addition to the means herein provided, the Trustees under the First Mortgage Indenture executed by the Debtor on August 18, 1923, securing the old bonds of the Central Forging Company, shall execute

a cancellation of said Trust Indenture and such satisfaction of the lien of said mortgage as may be necessary.

Respectfully submitted,
/s/ Robert Michael,
Successor Trustee of Central
Forging Company,"

and dated February 26, 1942.

Following that is the order of the Court.

"Ordered now, the 27th day of February, 1942, it appearing that Robert Michael, Successor Trustee of the above Debtor, has filed with this Court a revised plan of reorganization, it is hereby ordered that the said

(T. 264):

Trustee shall not later than the 5th day of March, 1942, mail notices to the Debtor, creditors and stockholders, the indenture trustees, the Secretary of the Treasury, the Securities and Exchange Commission, and all other parties in interest, stating that the within plan has been filed on the 27th day of February, 1942, that copies of said plan are available for inspection at the office of the Clerk of this Court at Lewisburg and Scranton, at the office of the Special Master, John W. Crolly, Scranton, Pennsylvania, at the office of the Trustee, 1210 Scranton National Bank Building, Scranton, Pennsylvania, and at the office of the Debtor at Catawissa, Pennsylvania; that objections to said plan shall be filed with the Clerk of this Court at Lewisburg or Scranton on or before the 13th day of March, 1942, and that a hearing on said plan and for

the consideration of any objections which may be made, or of any amendments of plans which may be proposed by the Debtor, or any creditor or stockholder, will be held before the Honorable Albert W. Johnson, United States District Judge in the Federal Building at Scranton, Pennsylvania, at 11 o'clock A. M. on the 16 day of March, 1942.

The times and places for filing objections and for hearing on the plan submitted by the Trustee are hereby set as indicated in the preceding paragraph.

(T. 265):

/s/ ALBERT W. JOHNSON,
United States District Judge."

And the paper has the filing mark of this Court, filed February 27, 1942. The cover, the blue cover, has at the bottom of it, printed, Stark, Bissell & Reifsnyder, Attorneys and Counsellors at Law, 12th Floor Scranton National Bank Building, Scranton, Pa.

Q. Now, after this plan was filed, Mr. Michael, I will ask whether copies were made and mailed out to the bondholders and creditors.

A. We complied with the order of the Court attached to it.

Q. I think you had plan printed, did you not, and sent it out in that form.

A. Yes, it was printed.

Q. And that fixes a date in March for the hearing on the plan. Did you still continue your visits to Mr. Knight's office? Was there occasion for further visits at this office?

A. Yes, I think there was, I know there was, we continued to go down.

Q. Do you have any recollection of a meeting at Mr. Knight's office on the 8th of April, 1942.

A. I do, yes.

Q. Who accompanied you to this meeting?

A. Donald Reifsnyder and myself went to his office on the 8th.

Q. Were you there some time?

A. Yes; we were there quite a little time.

Q. Up to that time, or at that time had a definite agree-

(T. 266):

ment been made as to the exact amount of cash that was to be paid by the Maxi Manufacturing Company in addition to the $17,000 which was to go, eventually, to the bondholders and unsecured creditors?

A. I think on that day—

MR. LEVY: One minute, please. We object to the question because the plan, itself, speaks for the disposition of the property.

THE COURT: The objection is overruled. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.

(Sealed). U.S.D.J.)

MR. LEVY: And our objection goes to the competency of the witness, the competency of the question and the materiality of it.

THE COURT: You mean the government is so bound by the plan that they shall not be permitted to approve any agreement outside the plan?

Colloquy

MR. LEVY: Well, since the Court asked for the question it is probably well that we give the Court the answer.

THE COURT: That is what I expected.

MR. LEVY: My objection goes to this: The government has now offered in evidence, and is bound by the evidence, that there was a plan of reorganization which was confirmed by

(T. 267):

the Court and which was carried out scrupulously to the letter, every dollar was paid to everybody that that plan called for payment to and every dollar was paid over that was called for payment and that was finally confirmed by the court and the trustee has filed a report which the government, itself, offers, showing the payment by check to each and every person entitled to money under that plan, and the government is bound by that proposition. Our contention is that, there are definite counts in this indictment, if your honor please, that the government is bound by and the government cannot show anything outside of the charges made in this indictment. If they have any other crimes to charge these men with they haven't charged it in this indictment, the charge of this indictment is that $3000 was embezzled from this estate and that the means and manner of that embezzlement was alleged to have come from book accounts. The government has not shown that there was a dollar of book accounts in this estate April 24th when this money was turned over, not a dollar, and the proof will be that

there wasn't any money from those book accounts in this estate. That's our proposition and I say to this court now that we are charged under a plan of reorganization of embezzling funds when

(T. 268):

the testimony of the government is that we paid every dollar of it.

THE COURT: Yes, but, Mr. Levy, we will assume, as you argue that every dollar that the Maxi Manufacturing Company was to pay was paid. That I gathered from Mr. Pratt's opening statement will be his proof. But from his opening statement it would appear that he intends to prove that regardless of the plan $3000 or an approximate sum of $3000 was diverted and did not find its way into the estate nor to the creditors, and that regardless of the plan. I can't see that the government is bound by a paper in which a plan of reorganization is set forth if the facts are other than they would appear on the paper. The objection is overruled. You may have an exception.

(Which exception is hereby allowed and sealed accordingly

(Sealed) U.S.D.J.)

THE COURT: Go ahead, Mr. Pratt. You might read the question Mr. Barrows.

(The reporter read question.)

MR. MARGIOTTI: That is with reference to April the 8th?

THE COURT: April the 8th, yes.

A. I think it was on April the 8th at Mr. Knight's office that the final amount was determined that was to be paid
(T. 269): —
over by the Maxi Manufacturing Company.

Q. And in your conversation with Mr. Knight on that occasion did he state the amount which was ultimately to be paid in cash in addition to the $17,000?

A. Yes, we arrived at a figure that day.

Q. What was that amount, if you can recall?

A. I think that amount was $25,982 some odd cents.

Q. At that time do you know, in connection with the discussions whether anything was said about a credit which Maxi Manufacturing Company had an account of some advances?

A. Yes, they had paid some bond premiums for the previous trustee and I think they amounted to $421.50 or $451.50, I think it is.

Q. Now, in the figure in which you mentioned as the ultimate price, which was $25,982 and some cents, I think it is as you mentioned it, in the conversation was anything said as to whether they were to get credit on top of that for this four hundred odd dollars of advancements?

A. Yes, that was to be taken off, that amount.

Q. Was that to be taken off or added to it as the debt, or as the complete consideration?

A. If they owed us $25,892 and we owed them $451 you would naturally take it off, that is the amount they were to pay us. I am not just quite sure on those figures.

THE COURT: In other words, in the plan as tentatively

(T. 270):

agreed upon, the Maxi Manufacturing Company, as I understand it, was to receive an amount, whatever it was, sufficient to reimburse them for the advances made, not an amount in cash but a credit we'll say.

THE WITNESS: That's correct.

THE COURT: A credit.

THE WITNESS: That's right.

THE COURT: For those premiums, regardless of the amount.

THE WITNESS: Yes. You see this amount of $25,000 or $26,000, approximately, was made up of various items, namely, the current assets less the current liabilities and with the addition of some other pre-payment. There was a pre-payment on insurance and pre-payment on life insurance. Now, those figures are rather complex there and I couldn't count them out of my head but they amount to, they come to some $64,000 in quick assets, or current assets, and an amount of current liabilities sufficient to reduce that down to $25,892, or approximately. That is what Maxi would owe to the trustee for the current assets and which was to be paid over in addition to the $17,000 which was to be used in the retirement of bonds and unsecured creditors.

Q. Now, at a later date, namely on April 14, 1942, I will ask whether you filed this report of successor trustee, which

(T. 271):

is Government exhibit in evidence G-1-F.

A. (After examining:) Yes. This is the report which I filed as trustee which determined the amount of money which would be available for distribution by order of the court.

Q. Yes.

A. This is in addition to the $17,000 which had been put up in escrow for the retirement of bonds and unsecured creditors.

Q. It was filed, I notice, on April 14th, which is about a week after this talk that I have been referring to of April 8th.

A. That is correct.

Q. Now, how long a conference was that that you had on that occasion?

A. Well, that conference lasted, I would say, some two or three hours. We got there in the middle of the afternoon. As I say, we came to a final figure on the amount that Maxi Manufacturing Company was actually owing to the Central Forging Company.

Q. You mean the amount they were to pay in cash at the closing?

A. That's correct. That was the purpose of that meeting and that was accomplished there.

Q. Now, what time did you leave Mr. Knight's office, do you recall?

A. Well, we left there about 6 o'clock and then went across the street to the Edison Hotel where Mr. Reifsnyder and I had dinner. After dinner—I had left the car around the corner, I remember it was my car and there was something wrong with it, I don't remember whether it was

(T. 272):

a flat tire, but I know we parked it there and we discussed what we had accomplished that day and also as to the method of paying this $3000 over to us.

Q. Now, what $3000 are you referring to?

A. Well, that was—

MR. LEVY: One minute, please. We object to the testimony insofar as it relates to Mr. Knight, the testimony not having taken place in Mr. Knight's presence.

THE COURT: The objection is overruled. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U.S.D.J.)

A. Well, we had had a conversation during the afternoon in which it was agreed—

Q. With whom?

A. With Mr. Knight and Mr. Reifsnyder. It was agreed that $3,000 would be made payable to a third party and that money was to come back to us, less certain deductions for income tax purposes.

THE COURT: Well, now, just a moment. Before we proceed further: You say that matter of $3000 payment was discussed on the afternoon of April 8th?

THE WITNESS: That is correct.

THE COURT: And you say, further, it was agreed (T. 273):

that it would be paid through a third party?

THE WITNESS: Well, that wasn't definitely established at that particular moment, but after we had dinner, then Mr. Reifsnyder left me and went over to Mr. Knight's home and I was to pick the car up and meet him, which I did, in front of Mr. Knight's home. Mr. Reifsnyder came out and got in the car and we drove home and on the way—

Q. Do you know how much time he spent at Mr. Knight's residence?

A. It was approximately, I would say, a half hour to three-quarters of an hour. And we drove home and while on our way home Mr. Reifsnyder told me that it had been tentatively—

MR. LEVY: One minute, please. We object to that.

THE COURT: No, I will let him answer it.

A. (continuing) it had been tentatively agreed that Mr. George Fenner, Sr., would be approached for the purpose of receiving the $3000, which he in turn would turn back to us.

THE COURT: "To us," you mean whom?

MR. ROBINSON: I desire to object to that statement on behalf of Mr. Fenner, he not being present and not being a party to this.

THE COURT: No, the objection is overruled and you may have an exception.

(Which exception is hereby allowed and sealed ac-

(T. 274):

cordingly.

(Sealed) U.S.D.J.)

MR. ROBINSON: And ask to have it struck out.

THE COURT: "To us," you mean whom, Mr. Michael?

THE WITNESS: I don't quite follow you.

THE COURT: You said the $3000 to be paid through a third party but returned "to us"?

A. Don Reifsnyder and Robert Michael.

THE COURT: All right.

Q. Now, on the occasion of this talk in Mr. Knight's office on the afternoon of April 8th was there anyone there besides Mr. Knight, Mr. Reifsnyder and yourself?

A. I am not clear on that but it seems to me that Homer Davis was.

MR. COUGHLIN: Now, just a minute. We object to that, may it please the court.

THE COURT: Unless you are reasonably certain of it don't let's have it.

THE WITNESS: Well, I am not certain of it but I don't think even if Homer was there he engaged in any conversation.

(T. 275):

MR. COUGHLIN: Just a moment. We object to the witness answering.

THE COURT: All right, all right, if you don't want that answer, it is all right with me.

MR. COUGHLIN: We ask to have it stricken out.

THE COURT: Yes, it may be stricken.

MR. COUGHLIN: All of it. I mean any reference to Mr. Davis.

THE COURT: Yes, it all can be stricken.

MR. PRATT: Your Honor refers to the reference to Mr. Davis?

THE COURT: Yes, to Mr. Davis I mean, yes.

Q. Now, after you picked up Mr. Reifsnyder in your car at Mr. Knight's residence did you have any talk with him in regard to what he had said to Mr. Knight or what Mr. Knight had said to him?

A. Yes, he informed me that in his conversation there that they had tentatively agreed, providing Mr. Fenner was willing, that Mr. George Fenner, Sr. would be the logical man to receive the check for $3,000 due to his connection as attorney for the Maxi Manufacturing Company.

Q. Was anything said as to whether there was an arrangement made by Mr. Knight, or any conversation as to the net amount which that $3,000 check would give to you and Mr. Reifsnyder?

MR. LEVY: Where was this conversation, Mr. Pratt?

(T. 276):

MR. PRATT: In the automobile on the way back from Sunbury to Scranton.

A. I don't think there was.

MR. LEVY: We object to it for the reasons that I assigned in my previous objection.

THE COURT: Well, he said he doesn't think there was.

MR. MARGIOTTI: That is the end of that.

A. No, I don't think that there was any conversation relative as to what would be deducted from the $3,000.00 due to the fact that we couldn't tell what Mr. Fenner's income tax would have been, that is, what percentage it would have been. That was left sort of an open question.

Q. What, if anything, was said in connection with—

MR. LEVY: If your Honor please—just one minute, Mr. Pratt. If your Honor please, my objection doesn't go to the correctness or incorrectness of this man's answers or whether they affect us or not, my objection is there are three counts to this indictment—

THE COURT: Yes.

MR. LEVY: The first count charges a substantive offense—

THE COURT: Yes.

MR. LEVY: And this man is testifying now to clearly hearsay testimony so far as Mr. Knight is con- (T. 277):

cerned. His conversation with Mr. Reifsnyder was not in the presence of Mr. Knight.

THE COURT: It wouldn't have to be.

MR. LEVY: And in the second—

THE COURT: It wouldn't have to be.

MR. LEVY: What is that?

THE COURT: If there was a conspiracy it wouldn't have to be.

MR. LEVY: But I know that would only go to the third count, first. And secondly—

THE COURT: It also goes to the first, incidentally, under the many reported federal cases which hold, and to no uncertain terms, that if there is a joint criminal enterprise, and regardless of any charge of conspiracy, the same rule applies.

MR. LEVY: My objection goes to the entire question on the ground that it is immaterial, irrelevant and incompetent on the state of the record at the present time.

THE COURT: The objection is overruled and you have an exception.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U.S.D.J.)

MR. PRATT: Did I complete the question, Mr. (T. 278): Barrows?

THE COURT: I think Mr. Michael has completed an answer and I don't know whether or not you had gotten to the next question or part of it or not, Mr. Levy then came in. I wasn't listening.

MR. PRATT: I will ask a new question.

Q. In connection with the conversations that you had with Mr. Knight, you and Mr. Reifsnyder, relative to this $3,000, what, if anything, was said as to a deduction from the amount—

THE COURT: Just a moment now, Mr. Pratt. Are we still on the evening of April the 8th as the date?

MR. PRATT: No, we are on the afternoon of the 8th.

THE COURT: All right. But we are still on that same date?

MR. PRATT: Yes.

THE COURT: You are talking about anything having been said in the office in the presence of Mr. Knight and Mr. Michael and Mr.—

MR. PRATT: Mr. Reifsnyder.

THE COURT: —Reifsnyder. All right.

A. Well, it was agreed that due to the fact that accounts receivable, open accounts receivable subject to not being collected in full, that it would be a logical place to take $3,000 off the accounts receivable, which were approximately $24,000 and by reducing the accounts receivable—

(T. 279):

MR. LEVY: I object to it as not being responsive to the question.

THE COURT: I think it is very responsive.

MR. PRATT: Yes, it is.

THE COURT: I think it is very responsive, he was asked what the conference was.

MR. ROBINSON: That is a conclusion; whether it was an agreement or not is for the Court to say. I think he ought to say what the conversation was. That is his conclusion.

Colloquy

THE COURT: As near as you can recall the substance of it.

MR. LEVY: We ask that the clause be stricken.

THE COURT: I think we are making too much fuss about the word "agreed" but if you want him to choose another word, I will suggest that he choose one.

THE WITNESS: Well, in the meeting in Mr. Knight's office in the afternoon on April 8th, after considerable discussion, we arrived at a figure which was to be the amount that Maxi Manufacturing Company would pay to the Central Forging Company for the loose or current assets.

MR. LEVY: Now, one minute, please. I want to object to the examination. The witness is giving his conclusion of what was said there. Now, I think we are entitled to the exact words of every person. It is for

(f. 280):

the jury to say whether they arrived at anything.

THE COURT: Mr. Levy, this is the third time that this witness's testimony has been interrupted, and after I had ruled. I don't want to appear arbitrary, I have ruled three times on the question, I have overruled your objection, I have stricken from the record the word "agreed," the witness has selected the word "discussion," exact words, I don't know whether or not he can recall the exact words and the witness may go on and without further interruption. Having ruled once, it should be adequate for the protection of your

client. Now I will ask the reporter to read back the witness's testimony thus far so that he may pick up his trend of thought.

A. (Read by the reporter.) This figure, as I have testified previously, was some $25,892. However, my understanding—

THE COURT: No, as nearly as you can recall what was said, not what you understood, but as nearly as you can recall it. The substance of the conference.

THE WITNESS: You want me to repeat what each individual said back and forth?

THE COURT: Well, I don't know that you can do that.

THE WITNESS: I simply can't do it, it is three and a half years ago. I can't repeat hardly any words that were actually said. I know what was concluded (T. 281):

there. I know that everybody agreed to it, or entered into the discussion, and I know what the conclusions that came out of that meeting were. But for me to attempt to repeat word for word back and forth of a three-hour discussion, I can't do it.

THE COURT: All right, then, you recall the substance of the conference as best you can.

THE WITNESS: I know what was agreed after there were certain disputed items there, they tentatively agreed, or actually agreed on the amount of $25,892. Then we had to take into consideration the fact that there was to be $3,000 and that was deducted

from the accounts receivable, therefore decreasing the amount that Maxi was to pay over to the trustee, it was by the sum of $3,000, reducing it down to $22,892, which would be the amount which would be furnished to the Court for the purpose of distributing under the allotment of fees and expenses. Now, at that time no third party had been decided upon as the one to whom the $3,000 was to be paid.

THE COURT: Well, now, at that conference were there any names suggested as to whom the third party would be?

THE WITNESS: I don't remember that there was any.

THE COURT: All right, go on.

(T. 282):

MR. LEVY: Now, if your Honor please, may I at this point object to the statement of the witness; the answer of the witness and ask that it be stricken upon the grounds set forth in my objection, namely, that it is a conclusion as to what was agreed to and the witness has not stated what any of these people at that conference stated?

THE COURT: The objection is overruled and you may have an exception.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U. S. D. J.)

THE COURT: Mr. Pratt may proceed.

Q. Now, what you have said, does that amount to the substance of the conversations?

A. Yes, that is the conclusion, the result of the discussions.

Q. Now, as to this $3,000 what, if anything, was said relating to the income tax on such an amount?

A. I don't remember at that time any discussion as to income tax.

Q. Now, have you related, as far as you recall, the substance of the occurrences at that conference so far as the $3,000 is concerned?

A. That's correct.

Q. Now, following this conference do you know of your own knowledge of any letter that was written by Mr. Reifsnyder on the following day?

A. Yes. On our way back that night

(T. 283):

he stated that he was to write a letter in which for all purposes was outlined a plan under which we were to take a $3,000 reduction in the accounts receivable.

Q. For what purpose?

A. This was to appear as a matter of record that we had agreed to take $3,000 less.

Q. Was anything said then as to the purpose of the letter in regard to this $3,000?

A. Well, that was to cover up; that letter in which we agreed to take a reduction of $3,000 in the accounts receivable was to cover up, for the purposes of the record, any question as to why $3,000 less was paid than was shown by the books.

Q. And was anything said then as to the net amount which you and Reifsnyder were to receive of this $3,000?

A. No, no, it hadn't been said yet. Well, we were to receive the $3,000, but it had been suggested, I don't know whether I suggested it or Mr. Reifsnyder, that whoever got it should declare it in his income tax and deduct from that a reasonable sum which would be used to pay his income tax, whatever his income tax would be with the addition of $3,000 to his their present income.

MR. PRATT: May I have the Reifsnyder letter of the 9th?

MR. MARGIOTTI: That is the letter the Court withheld ruling on?

MR. PRATT: Is this in evidence?

(T. 284):

MR. MARGIOTTI: No, the Court withheld ruling on that, Mr. Pratt.

THE COURT: I think it has been marked for identification.

MR. MARGIOTTI: That's right.

MR. PRATT: It was not admitted, ruling on it, I think, was withheld.

THE COURT: That is Mr. Reifsnyder's letter, I think.

MR. PRATT: This is Mr. Reifsnyder's letter to Mr. Knight.

Q. I am calling your attention to this letter, Exhibit G-2-C for identification. I will ask you if you ever saw that letter around the date that it bears, or a copy of it.

A. I couldn't answer that. I ever seen this letter but its contents are familiar to me because the letter was writ-

ten as the result of a conversation which Don Reifsnyder and I had on the afternoon or evening of April the 8th.

MR. LEVY: I object to the answer and ask that it be stricken.

THE COURT: No, the answer, as far as he has gone, may remain. The objection is overruled and you may have an exception.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U. S. D. J.)

(T. 285):

Q. What was said between you and Mr. Reifsnyder touching this letter?

A. Well, this was the letter which was written to justify the reduction of $3,000 in the accounts receivable of the Central Forging Company.

MR. LEVY: I want to object to that. Why Mr. Reifsnyder wrote the letter is not in the ken of this man's brain.

THE COURT: No, he has testified previously that Mr. Reifsnyder was to write a letter but I don't think he can testify from his own knowledge from what he has already said that this was the letter, in fact, written.

Q. As I understand it, you did not see this letter at the time?

A. No.

Q. A copy of it?

A. I don't think so, no. He informed me that he had written it but I didn't see the letter.

Q. He told you he had written a letter to Mr.

A. Mr. Knight.

Q. —Mr. Knight.

A. In which he laid out the plan of deducting the $3,000 from the accounts receivable.

MR. PRATT: That being the purport of this letter, we again offer the letter, if your Honor please.

THE COURT: No, I still sustain Mr. Levy's objection.

MR. PRATT: Very well.

Q. Now, following this meeting on the 8th of April, you have already testified that you filed a report as successor trustee dated, or filed on April 14, 1942. I observe that in the first paragraph of this report it says, "The figures submitted below are taken from reports audited by Dobson Accounting Service, Wilkes-Barre, Pennsylvania." Now, had you been in contact with an auditing firm of that name in connection with your official duties as trustee?

(T. 286):

A. Yes, I had, the Dobson Accounting System of Wilkes Barre had been retained by Walter Compton and I simply kept them on by contacting them and they agreed to do it.

Q. They made periodical audits and reports?

A. Monthly audit and report.

Q. Now, I hand you here a paper which will be marked for identification—

(Exhibit G-10 marked for identification.)

Q. I ask if you have seen that before.

A. Yes, this came from my file.

Q. When did you first have that in your possession, do you know?

A. Well, it was probably sent to me the latter part of January, 1942, or I received it the 1st of February. The letter which accompanies it is dated January the 28th.

Q. And this is a report of examination of Central Forging Company by this auditing concern as of December 31, 1941?

A. That is correct.

Q. In connection with your conferences with Mr. Knight
(T. 287):
that you have already spoken of, was this account, this audit utilized?

A. That was the basis, we assumed—that was the basic period of time in which all our discussions were concerned with ~~and which~~ the alternate plan was predicated on.

Q. You mean as of December 31, 1941?

A. That's right.

Q. Do you know whether Mr. Knight had a copy of this?

A. No, I would just have to assume that he did.

Q. You don't know whether he did or not?

A. No.

Q. Did you and Mr. Reifsnyder have this paper in any of the discussions at Mr. Knight's office?

A: Oh, yes, yes, we consulted that. That was the basic paper.

MR. PRATT: I offer this audit in evidence, if the Court please.

MR. LEVY: We have no objection.

THE COURT: Does that apply to all defense counsel now?

MR. ROBINSON: Correct.

MR. COUGHLIN: It does to us.

THE COURT: All right, let it be marked.

(Exhibit G-10 received in evidence.)

THE COURT: Harmony once again has prevailed.

Q. Now, directing your attention once again to your report.

THE COURT: Just a moment before we get on another subject. We might adjourn because it will only be a matter of two minutes anyway.

(T. 288):

We will adjourn until 2 o'clock. The jurors may retire.

(The jury retired.)

Noon recess

Reading—Exhibit G-1-F

Afternoon session

ROBERT MICHAEL, resumed the stand.

Direct Examination (Continued).

BY MR. PRATT:

Q. At the time court adjourned, before lunch, Mr. Michael, I was asking you, or started to ask you, I think, about this report which you submitted to the Court on April 14, 1942, and also the relationship between that report and this accounting report, which is now in evidence as Government's Exhibit G-10. Will you look at this report which you submitted and state whether or not that report is harmonized with this Dobson report?

A. Yes, it is.

Q. Are you familiar with the Dobson report?

A. I am.

Q. Can you state to the jury the way you arrived at the figures on this report with relation to the Dobson report?

A. Do you want me to take the Dobson report—

MR. PRATT: First I should like to read to the jury, if the Court please, this Exhibit No. G-1-F, the report of April 14th. This is entitled, "Report of Successor Trustee."

(T. 289):

"Prior to the time for hearing on the confirmation of the revised plan of reorganization, as approved by the vote of the requisite number of creditors, and prior

to the application for fees and allowances by the various parties in interest, the successor trustee hereby submits a report of the assets to be acquired in the reorganization as an aid to the Court. The figures submitted below are taken from reports audited by Dobson Accounting Service, Wilkes-Barre, Pa.

Cash advanced by Maxi Manufacturing Company to pay bondholders and general creditors account plan	$17,000.00
Cash of debtor	133.90
Finished products	6,393.49
Parts in process	13,947.97
Raw materials	3,290.94
Unexpired insurance premiums	85.15
Cash surrender value of life insurance	1,199.11
Accounts receivable, assigned and unassigned, adjusted	20,534.50"

or a total of $64,595.06.

Against which the following obligations are due or become effective forthwith upon confirmation of the plan:

"Payment of bondholders and general creditors (T. 290): from cash advanced	$17,000.00
Accrued wages and salaries, compensation insurance and payroll tax, notes and accounts payable	24,190.73"

or a total of $41,190.73.

Reading—Exhibit G-1-F

"Recapitulation

Assets	$64,595.06
Liabilities	41,190.73
Balance	$23,404.33

The trustee calls the Court's attention to the fact that the Maxi Manufacturing Company has advanced $421.50 for the trustee's bond premium and expenses ($121.50) and the bond premium of the Equity Receiver in Columbia County ($300.00). These matters are covered in the trustee's requests for allowances and expenses and are to be adjusted between the trustee and the Maxi Company, if the plan is confirmed. However, with this considered the above balance is actually $22,982.83.

Further attention is called to the balance of $2,495.80 previously ordered paid for the Columbia County Equity proceedings ($2,795.80 less $300.00 bond premium mentioned in the preceding paragraph). This leaves $20,487.03 available for expenses and allowances to the various parties in interest.

Respectfully submitted,

(T. 291):

DON RELFSNYDER,
Attorney for Robert Michael,
Successor Trustee."

Q. Now, Mr. Michael, will you state, by consulting the Dobson report, just how you arrived at these figures in the report to this court?

A. Well, the report shows that under the assets you have a figure of $44,355.01, that is the total current assets. Now, from that was to be taken an adjustment figure, which in the schedule of inventories was $5,054.21, which, it was the contention of the Maxi Company, was of no value to them. It is carried under the heading of factory supplies, tools, fuel and office supplies. It was agreed that we would wipe that figure off completely. Therefore, if you take $44,355.01, subtract that sum of $5,054.21 and add to the result two other assets, which are carried on the assets page of unexpired insurance premiums and the cash value of life insurance policy you will receive the sum equal to that. I don't know whether it is carried on there or not. Then that, of course, would be the current value of the liabilities. From that you would take the—or that would be current assets. From that you would take the current liabilities, which are listed here at $29,404.26, with the deduction of interest on old notes, which are uncollectible, and while it is a bookkeeping entry here we weren't bound to pay it, so you take the $5,213.53 from the $29,464.26, take that result from

(T. 292):

the current assets and you will find that you get a result of $23,404.33.

Q. Deducting the—

A. Current liabilities from the current assets.

Q. Yes. Now, when you made this report, I direct your attention to the item "Accounts Receivable Assigned and Unassigned, Adjusted $20,534.50," is that a correct figure?

A. Well, it is correct only in the fact that it appears upon this book, or upon this paper, but actually it should be $23,534.50.

Q. Now, according to the Dobson report what should it be?

A. It should be $23,534.50 as it is outlined here.

Q. Now, you have thus stated that this item, which is placed at $20,000-odd should be $23,000-odd. How do you account for the difference between what you reported and what you say the fact is in regard to accounts receivable?

A. Well, that is the $3,000 which was diverted.

Q. Now, in the recapitulation—

MR. KIVKO: If your Honor please, we object to that as a statement of conclusion here; we ask to have that answer stricken out.

THE COURT: I will let him explain it more fully. He previously testified, as I understand it, that the plan was that the accounts receivable were to suffer a proportionate reduction of $3,000. He now tells us that (T. 293):

the Dobson report shows that the accounts receivable were, in fact, twenty-three thousand-some-odd dollars. But in his report filed with the court the figure given was twenty thousand-some-odd dollars, a difference of $3,000. Now, that difference was accounted for how, Mr. Michael?

THE WITNESS: Well, that was the $3,000 which was to be paid to a third party by the Maxi Manufacturing Company for the purpose of coming back to Donald Reifsnyder and myself.

THE COURT: And am I to understand that the accounts receivable were incorrectly stated at $20,000?

THE WITNESS: That is correct, that is incorrect.

THE COURT: All right.

Q. Now, directing your attention to the balance in the recapitulation, this shows a balance of $23,404.33 as available to the court for allowances. Is that a correct figure? Is that the amount that actually would be in your hands as a trustee upon the closing of this sale providing the matter of $3,000 had appeared as an asset in your hands?

A. No, it is not correct then.

Q. Then in what respects is this, your account filed April 14, 1942 false?

A. Well, it is false to the extent of $3,000. This $23,404.33 was the amount we informed the Court was available for distribution. However, that is short

(T. 294):

in the amount of $3,000 which the Maxi Manufacturing Company had paid.

Q. Or were to pay, you mean?

A. Were to pay to George Fenner.

Q. Now, taking this—if you add, then, $3,000 to this balance you have how much?

A. You will have, then, $26,404.33.

Q. Now, the amount of cash that was actually to be paid at the closing was how much?

A. It would be $26,404.33, less an advanced item of $421.50, which had been advanced by Maxi.

Q. Which would make a balance of the actual amount of cash to be paid at the closing of how much?

A. $25,892—25,982.83.

Q. Now, Mr. Michael, after the filing of this report of yours on the 14th of April, 1942, did you know of an order of court that was subsequently filed which provided for allowances to attorneys, and so forth?

A. I did, yes.

MR. PRATT: May I have G-1-H?

Q. I now direct your attention to Government's Exhibit in evidence G-1-H, order of Judge Johnson, "Order on Fees and Allowances Requested in Confirmation of Revised Plan of Reorganization," filed April 20, 1942. Are you familiar with that report or order?

A. Yes, I am. This is an order which was directed to me.

(T. 295):

Q. Do you know who drafted that order?

A. I am not sure. Does it say on the back of it?

(Exhibit G-1-H was handed to the witness.)

A. (Continuing): From the back I can't be sure.

Q. You don't know?

A. No.

MR. PRATT: Now I should like to read just the last of this document to the jury. It provides for allowances to various lawyers and provides compensation to the trustee and his attorney.

"This fully exhausts the funds of $23,404.33 available for fees, allowances and expenses as itemized in the report of the trustee filed April 15, 1942. This is a final order on allowances sought by all parties interested in this reorganization proceeding, and those

not herein considered are excluded from seeking allowances at any future time."

I should also like to call the attention of the jury to the fact that in this order Judge Johnson provided for the payment of certain court costs in Columbia County Equity Court, made allowances to the members and attorneys for the Bondholders' Committee, made an allowance to Mr. Knight as attorney for the petitioning creditor of $5,500, plus some expenses; an allowance to Special Master and attorney to the former trustee, also an allowance to the former trustee and then an allowance

(T. 296)

to Mr. Michael, trustee, and to his attorney, Mr. Reifsnyder, of $3,950 each, plus expenses which they had incurred aggregating $1,166.55, and then concludes with the statement which I read that this exhausts the funds available for allowances.

Q. Now, after this order was entered on the 20th of April, Mr. Michael, was there anything further to be done in the matter excepting the closing of the whole transaction?

A. No, I think that was the only thing, the only remaining thing.

Q. And when was that done?

A. That was done in Harry Knight's office in Sunbury on the day of April the 24th.

Q. Now, on that day, April 24th, the time and place had been arranged by mutual consent, had it not?

A. Obviously.

Q. How did you go to the place of meeting on that day?

A. I drove my car and picked up Donald Reifsnyder in Scranton and I picked up George Fenner in Wilkes-Barre.

Q. Now, after you picked up Mr. Fenner at Wilkes-Barre then where did you drive?

A. We drove to Catawissa, to the plant and there Mr. Fenner left us and we went on to Sunbury.

Q. You and Mr. Reifsnyder went on together just alone in your car?

A. Yes.

Q. And you then went to Sunbury and went to Mr. Knight's office?

A. That's correct.

Q. How did Mr. Fenner get there, do you know?

A. Well,

(T. 297):

he came down with Max Long and Homer Davis. They were right behind us, I mean, we stayed there a minute or two.

Q. You mean, do you, that you left Mr. Fenner out at the plant?

A. And then he continued his journey with—

Q. He joined the others and drove with them?

A. That's right.

Q. Now, while you were driving, you and Mr. Reifsnyder and Mr. Fenner, from Wilkes-Barre to Catawissa—and by the way, how far is that?

A. It is about 40 miles from Wilkes-Barre to Catawissa, or to Sunbury.

Q. To Catawissa?

A. To Catawissa I would say is about 35 miles.

Q. And during that trip (on 4-24-42) when Mr. Fenner was in the car did you have any talk with him in regard to the manner in which the final payments were to be made?

A. Yes. When I met Mr. Reifsnyder in Scranton, and on the way to Wilkes-Barre, he told me that he—that George Fenner had agreed to act as the intermediary in the receiving of the $3,000 and that we would have to talk with Mr. Fenner to set a figure as to what he would want to retain of it for his income tax. When he got in the car, and shortly thereafter, or sometime during the trip at least, the subject came up and it was discussed.

Q. What was the substance of the conversation?

A. Well, the substance of it was how much he felt he should have for

(T. 298):

the payment of tax on $3,000 additional income which he was supposed to receive and declare as part of his income. This was finally settled at the figure of $500.

Q. Now, then, you got to Sunbury and went to Mr. Knight's office, did you?

A. That's correct.

Q. And who were present at the conference that you had on that day?

A. There was George Fenner, Max Long, Homer Davis, Harry Knight, Donald Reifsnyder and myself.

Q. What time did you start this conference?

A. I would place it at 11 o'clock in the morning.

Q. What was done?

A. Well, of course we had the final papers, the bill of sale, the deed to the real estate and the bill of sale for the personal property.

Q. Had those papers been prepared?

A. They had been prepared but it seems that they were not quite in the order that Mr. Reifsnyder wanted themsand they had to be revised. I knew at the time, there

was some wording or something, and then they had to re-type some of them.

Q. Who had to prepare these papers, if you know?

A. I think Mr. Knight had. They were all ready when we got there.

Q. Then there had to be some revision of the papers?

A. Yes.

Q. And during that period what was happening otherwise?

A. Well, sitting around and talking and discussing the various things that entered into it.

(T. 299):

Q. Now, after the papers of transfer, the deed and the assignments or bill of sale, whatever was necessary, after they had been approved then they were signed by you, were they?

A. That's right.

Q. And then what was done with them?

A. Well, they were to be delivered to the proper persons.

Q. That is, to Mr. Knight?

A. To Mr. Davis. I don't know who took possession of them but they were the property of the Maxi Manufacturing Company.

Q. Now, then, at that time was the consideration paid which had been agreed upon, the consideration to you as trustee for the transfer of the assets of Central Forging Company?

A. Yes, it was paid in the form of several checks.

Q. Who drew those checks? Who wrote them?

A. Homer Davis, secretary and treasurer of the Manufacturing Company.

Q. Of the Maxi—

A. Maxi Manufacturing Company.

Q. Where did he do that?

A. Well, he did it at a table in the library of conference room of a suite of offices of Mr. Knight's.

Q. And everybody was there at the time?

A. Yes. My recollection is that he sat at a small table there and drew the checks as directed by the parties of interest.

Q. Who directed the amount of these checks? Who directed Mr. Davis in drawing the checks, do you know?

A. Well, it was my understanding, or at least I assumed that when it was

(T. 300):

paid over it would be paid over in one check to Robert Michael, trustee, but Mr. Knight had the idea that it should be paid over in several checks, it wasn't necessary to pay it all in one check. And Mr. Reifsnyder disagreed with that procedure and there was considerable discussion as to whether it was proper or not that the Maxi Manufacturing Company should pay certain fees directly, namely, of course, Mr. Knight's fee, whether the $225 check to Mr. Unangst, the escrow agent, should be drawn directly and whether I, as the trustee, should be recompensed in the form of two other checks. It was over my head, the legal end of it. I couldn't see why it should be done that way or if they wanted it done that way, why shouldn't it be done. But anyway there was a discussion, and finally Mr. Reifsnyder said in his opinion it would be all right.

Q. Now, you said it was your understanding at first that it should be paid in one check.

A. Well, that was my impression, that as trustee that

the checks should come to me and that I would make disbursements in accordance with orders of the court.

Q. That would include the $3,000?

A. No, that did not include the $3,000.

Q. Now I show you these checks which—first I show you this check, Exhibit No. G-3-C to Robert D. Michael, Trustee, $8548.33. Is that one of the checks that was drawn that day?

A. Yes. This is the check that was—this is the only check

(T. 301):

that was drawn to Robert Michael, Trustee, and in the amount of $8,548.33.

Q. What was that to cover?

A. That was to cover all of the allowances in that court order other than the ones where there were specific checks drawn that day. In other words, out of this $8,548 I was to pay, and did pay, various accounts, I am not quite sure whether I can remember them all, and I know I couldn't remember them all in their amounts, but Wickersham, the attorney for the Bondholders' Committee got a fee, the three members of the Bondholder's Committee got a fee out of that—

Q. To interrupt so as to not unduly lengthen it. Was there an amount which you paid out entirely in accordance with the court's order?

A. I did. This represents the only check and the only amount of money that I handled as a trustee.

Q. Now—

A. That is, arising from the order of the court.

Q. Now, the next of these checks, which is Government Exhibit G-3-D—these were all dated April 24, 1942—this is

made payable to Harry S. Knight for $5,789.45. What does that check represent?

A. That represents the amount of the fee and expenses as allowed by the court to Harry Knight.

Q. Now, the next of these checks, which is Exhibit G-3-A, payable to Robert D. Michael, $842.05?

A. That is a check

(T. 302):

made payable to Robert Michael, individual, and it covers total amount of fees as allowed by the court, Donald Reifsnyder and Robert Michael, plus an amount which was allowed to us for expenses.

Q. Out-of-pocket?

A. Reimbursements.

Q. Out-of-pocket payments?

A. That's right.

Q. Now, the next of these checks is Exhibit G-3-B, a check of the same date and of the succeeding number, payable to George L. Fenner in the sum of $3,000. What is that check? What does that represent?

A. That is the check made payable to George Fenner, which was to be cashed by him and the proceeds, less $500, turned over to Mr. Reifsnyder and myself.

Q. And the next check, in order, is one to Harry S. Knight for $2,000. Had that anything to do with the payment of the consideration for the sale of the assets of Central Forging Company to Maxi?

A. No.

Q. And the last of these checks—I think I didn't mention the exhibit number on the one to Mr. Knight for $2,000, that is G-3-E.

And the last of these checks is G-5 and is a check of the same date, payable to Edward R. Unangst for $25. What is that?

A. That is a check payable to Mr. Edward Unangst of the Catawissa Bank for services which he was rendering as escrow agent.

Q. Now, excluding the check of $2,000 to Mr. Knight, will you state whether these five checks, what they represent? I will ask you what they represent in the aggregate now. (T. 303):

A. They represent the total amount of the money paid by the Maxi Manufacturing Company for the personal property and loose assets, or current assets, for everything over and above the real estate.

Q. Over and above the $17,000?

A. That's correct.

MR. LEVY: One minute, please. We object to that as stating the witness's conclusion.

THE COURT: It is hardly a conclusion, he was the trustee and it is a fact whether or not he received these and for what. He was the man selling, he was the man receiving the money, he was the man charged with the responsibility. There is no conclusion, Mr. Levy. The objection is overruled and you may have an exception.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U.S.D.J.)

Q. How long did this conference at Mr. Knight's office on the 24th of April last?

A. Well, we finished the morning out there, then went over to the Edison Hotel and had lunch.

Q. All of you?

A. I think that Mr. Knight went home for lunch, he lives not far from there. As a matter of fact, it seems to me, my recollection is that he had some engagement at home or something. But we went over to the hotel and had

(T. 304):

lunch and then went back to Mr. Knight's office where we concluded the business of the day.

Q. About what hour did you conclude the business there?

A. Offhand I would state about 2:30.

Q. Then what did you do? Where did you go?

A. We went from there to the bank in Catawissa.

Q. To the Catawissa National Bank?

A. That is correct.

Q. And who went?

A. Mr. Reifsnyder and I went in our car; Mr. Fenner and Mr. Davis and Mr. Long went in the other car.

Q. In whose car did you and Mr. Reifsnyder drive in?

A. I had my car.

Q. Your car. And what time did you get to Catawissa? How far is that from Sunbury?

A. Well, it is about 15 miles, in round figures. We got to the bank after it had closed and it was necessary for someone to rap on the window, as I recall, and finally Mr. Unangst, the cashier, came and opened the door and let us in.

Q. Did he know you were coming?

A. Yes, he knew we were coming by virtue of a telephone call which Mr. Homer Davis had made.

Q. So you arrived there just about bank closing time?

A. Well, it was shortly after.

Q. Yes.

A. And that was the purpose of Mr. Davis's call, was to assure—

(T. 305):

Q. Now, when you got there where did you go in the bank?

A. We went back into the directors' room.

Q. And who was present?

A. Homer Davis—Max Long had left at that time, he didn't come in the bank, as I remember, there was Homer Davis, George Fenner, Donald Reifsnyder, Mr. Unangst and myself.

Q. And when you were there in the bank did you see this check to Mr. Unangst? Was that delivered to Mr. Unangst at that time, do you recall?

A. I am unable to state.

Q. Now, what, if anything, was done at that time in regard to this check payable to George L. Fenner for $3,000?

A. Oh, pardon me. I thought you had that check in your hand. You mean Mr. Unangst's check?

Q. Yes.

A. That was delivered to Mr. Unangst and it was to be—for which we received a receipt and, as I remember, turned over some other papers to him.

Q. Now, how about the $3,000 check?

A. I never saw the $3,000 check.

Q. You don't know who had it?

A. I do not know who carried it.

Q. Now, at that time on 4-24-42 do you know whether that check was cashed at the bank?

A. I couldn't say that it was cashed, but I know Mr. Unangst brought in $3,000 and laid it on the table.

Q. In what form did he bring in the $3,000?

A. It was

(T. 306):

in six bundles of $500 each.

Q. How were they wrapped? You say "bundles."

A. Well, they were in the usual wrapping of a bank, a paper tab was around the center of the bundle.

Q. You mean a narrow paper strip around each package?

A. That's correct.

Q. Was there any indication on those wrappers as to how much was in each package?

A. Yes, there was "$500" stamped on them.

Q. And what did Mr. Unangst do with the $3,000 when he brought it in?

A. He simply brought it in and laid it on one end of the directors' table.

Q. And what then occurred?

A. Mr. Fenner came over and picked up one $500 package, opened it and counted. Don Reifsnyder picked up another bundle and put it in his pocket, and the other four bundles were place in our brief case.

Q. You say "our brief case," what do you mean?

A. Well, we carried a brief case with us with the various files of the Central Forging Company which were necessary, and it was placed in this file.

Q. That was a brief case, then, used jointly by you and Mr. Reifsnyder?

A. Yes, that is correct.

Q. And you say that $2,000 was put in that?

A. That's right, yes.

Q. And $500 was taken by Mr. Fenner?

A. That's right.

(T. 307):

Q. And $500 was put by Don Reifsnyder in his pocket?

A. That's right.

Q. Is that right? What was the $500 that Mr. Fenner put in his pocket, what was that for?

A. That was for the purpose of paying his income tax on the $3,000.

Q. How long were you there?

A. Oh, I'd say a half, three-quarters of an hour.

Q. Then you left there some time between 3 and 4 o'clock, did you?

A. Yes.

Q. And then where did you go?

A. We drove over to the Bloomsburg Country Club. The reason that we drove there is that Don Reifsnyder called up Hervey Smith, whom we were to pay $500 to, and found—his secretary told us that he was on the golf course.

Q. So you drove to the golf course?

A. We drove directly to the golf course.

Q. How far is Bloomsburg from Catawissa?

A. Five miles, I'd say.

Q. Who was in the car?

A. Don Reifsnyder, George Fenner and myself.

Q. Who was driving?

A. I was driving.

Q. It was your car?

A. That's right.

Q. Now, when you got over to the golf course at the Bloomsburg County Club, what occurred?

A. Well, in driving up into the club there was an entrance road which the golf

(T. 308):

course skirts, and as we went up there somebody, I don't know who it was, it might have been myself, as far as that goes, stated, "Well, there is Hervey over there now." So I stopped the car and Don got out and I got out, too, and we walked out on the golf course.

Q. You mean he was playing golf and coming along, is that right?

A. Yes, that's right.

Q. And when he came along, then what occurred?

A. Why, Don gave him the $500 which he had in his pocket for that purpose.

Q. What was the occasion for paying Hervey Smith $500?

A. Hervey Smith's father was an attorney and he represented the Beckleys who were of interest here. As a matter of fact, the Beckleys were the people who originated the Central Forging Company. Mr. Beckley had died and his widow was surviving and, of course, had the property. Hervey's father had died and Hervey had succeeded to the representation of the Beckleys.

Q. Hervey Smith was a lawyer?

A. That's correct. And their claim, unsecured, amounted to some $38,000. Mr. Smith and Mr. Reifsnyder were old friends, as a matter of fact, they had played together as kids and grew up together. In the beginning of the proceeding Don Reifsnyder said to me—

Q. Well, I think we can exclude that conversation.

A. Well, I was trying to outline the background.

MR. MARGIOTTI: We have no objection to it.

(T. 309):

A. It was strictly—

MR. MARGIOTTI: I would like to hear it.

A. It was to augment Mr. Smith's fee which he would be able to charge the Beckleys.

Q. What were the Beckleys getting out of this $17,000?

A. They were getting 5 per cent of $38,000, some seventeen or eighteen hundred dollars.

Q. And you were giving Hervey Smith $500 for what?

A. To augment his fee that he would be able to charge because Don had said for the amount of work that he and his father had done for the Beckleys that he was entitled to a larger fee than he would be able to charge against a recovery of only $1800, and he said if he got a sizable fee out of this thing that he was going to give $500 to Hervey Smith. I said if he was going to do it that I wanted to participate in it.

Q. You had agreed to jointly give Hervey $500?

A. $500.

Q. So you stopped there at the Bloomsburg Country Club long enough to give him this $500?

A. Yes.

Q. Was that part of the $3,000 that had been put on the table by Unangst at the bank?

A. That's right.

Q. Now, then, you got back in the car, I assume, and kept driving on?

A. That's right.

Q. Then where did you go?

A. We came into Wilkes-Barre where Mr. Fenner got out of the car.

Q. You let him out at his home?

A. That's right.

(T. 310):

Q. About what time was that?

A. Well, judging from the various times, I would say it would be around 6:30, 7 o'clock.

Q. And after you let him out of the car then did you and Mr. Reifsnyder continue on your way to Scranton?

A. Yes, we did.

Q. How far is that from Wilkes-Barre to Scranton?

A. Twenty miles.

Q. And during the course of that drive did you and Mr. Reifsnyder have any discussion in regard to the matters which had just been taking place?

A. Yes, we did, we discussed—

MR. LEVY: One minute, Mr. Michael. I desire to object at this time for the same reasons that I have heretofore objected to, these conversations that are taking place not in the presence of Mr. Knight.

THE COURT: The objection is overruled. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U.S.D.J.

MR. LEVY: I wish, so that I may not have to interrupt, that that objection apply to all conversations that he may refer to between he and Reifsnyder that were not in the presence of Mr. Knight.

THE COURT: Yes, I understand.

Q. All right, continue your answer, please.

A. We dis-

(T. 311):

cussed the payment of the $2500 to Donald Johnson.

Q. And what was said in substance in that connection?

A. Well, Donald said, Donald Reifsnyder made the statement that Don Johnson expected one-third of all the fees allotted to us, plus one-third of $2500 to Fenner, I objected to this on the ground that it was my understanding that he was to get $2500 and $2500 only; and I further objected to this on the ground that payment of one-third the fees allotted Reifsnyder and myself, plus the $2500 from Fenner would not be an equitable distribution because we would be forced to pay an income tax on the $3950 which was allotted to us and that, at that time, which was in the spring of 1942, the income tax law for that year had not been passed, we did not know what the income tax for that year was going to be at that time, and if there was going to be any one-third distribution figure I insisted that there be proper provision made for income tax. In line with this discussion I suggested to Don that he draw up a sheet of paper, or put figures down there to see what it would amount to if you first take off, say 25 per cent for income tax and then divide it out on a one-third basis.

Q. What response did he make to that suggestion?

A. Well, he picked up his brief case and took out a yellow sheet, a yellow tablet which we usually carried, and started to figure, and he continued to figure as we talked.

(T. 312):

Q. Now, you said it was 20 miles from Wilkes Barre to Scranton?

A. That's right.

Q. Do you know how long it took you to drive that 20 miles that evening?

A. Well, I would say the better part of an hour, but we were in no particular hurry and we took our time and we were discussing this thing and he was writing these figures. I had slowed down so he could write.

Q. Now, can you reconstruct very definitely the figures which he put on that paper which, as you have stated, constituted a computation of what Donald Johnson would be entitled to on a basis of one-third less a provision for income taxes to you and Seifsnyder?

A. I think I could, yes.

MR. PRATT: If the Court please, may we use the blackboard for this purpose?

MR. MARGIOTTI: We object to that. He can testify.

THE COURT: I will tell you what I will let him do: he may need pencil and paper to do it: I will let him take a pad and do it and read it as he does it. The blackboard could hardly be made an exhibit in the cause. He can reconstruct the figures.

Q. Here is a tablet, Mr. Michael, and will you, as you are putting these figures down—

THE COURT: I will tell you what might be advisable to do and let him do it without any help: We

will take a 15-minute recess, the jurors may retire and I will let

(T. 312-A):

him sit at a table anywhere, he may want a few minutes' recess himself; when he is ready you advise the Court and we will have the jury brought in rather than having all of us sit here while he figures this out.

MR. PRATT: Very well.

THE COURT: Let the jurors retire.

(The jury retired.)

MR. BROOKS: If the Court please, is it possible to let him look at some of the exhibits in evidence?

THE WITNESS: I don't need to look at anything.

THE COURT: He can look at the checks that are in evidence if he wants.

(Short recess taken.)

(T. 313):

THE COURT: All right.

BY MR. PRATT:

Q. Did you make the computation that was requested, Mr. Michael?

A. I have, yes.

Q. Now let me see it.

A. They are on two sheets.

MR. MARGIOTTI: What was that answer?

MR. PRATT: "I have, it is on two sheets," he said.

Now, if the court please, may these be marked for identification as exhibits?

THE COURT: Let them be marked for identification.

MR. PRATT: Yes, for identification.

(G-11 marked for identification.)

MR. MARGIOTTI: What did you mark those exhibits, Mr. Pratt?

MR. PRATT: It is G-11.

THE COURT: G-11 for identification.

MR. MARGIOTTI: Are they both G-11 or is one G-12?

THE COURT: G-11 consisting of two sheets of paper.

Q. Which of these do you want to discuss first, Mr. Michael?

A. Well, this is the one that I prepared first (indicating).

Q. The one you prepared first is the one that has the exhibit mark on it?

A. I prepared it down to this mark and from that I compiled the section 1 and using the bottom of (T. 314):
the page—

MR. MARGIOTTI: Can't we have it marked 1 and 2, then they won't be confusing.

THE COURT: Yes, let them be marked A and B.

(Exhibits No. 11-A and 11-B marked individually to replace G-11 for identification)

THE COURT: Let me ask you two questions before you testify further? As I understand this discussion between you and Reifsnyder took place as you drove along after having left Mr. Fenner at Wilkes-Barre, is that right?

THE WITNESS: Yes.

THE COURT: Who was driving the car?

THE WITNESS: I was driving the car.

THE COURT: And where was Reifsnyder seated?

THE WITNESS: Beside me in the front seat.

THE COURT: In the front seat. And as you drove along you say he wrote on a yellow pad—a legal pad as we term it?

THE WITNESS: Well, it is a yellow fablet commonly used in law offices, etc.; we commonly carried it with us for the purpose of making notes on or doing any figuring.

THE COURT: Did you see the yellow pad at that time?

THE WITNESS: Yes.

(T. 315):

THE COURT: And as he made these figures did you and he discuss the figures?

THE WITNESS: Oh, yes, yes.

THE COURT: You did?

THE WITNESS: Yes.

THE COURT: Oh. All right. Go on.

BY MR. PRATT:

Q. Now, referring to the first of these sheets, which

is G-11-A, you start at the bottom with a figure of $8420.05. What is that?

A. That is the amount of the fees allowed to Don Reifsnyder and myself, which totals $8420.05 plus an amount of expenses totals $8420.05.

Q. That is the total amount of the check?

A. That is the total amount of the check.

Q. Now, below that you have the figures—you have the writing "subtract expense allowance, $520.05." What does that represent?

A. That represents the allowance allowed us for expenses, leaving a total of $7900.

Q. And $7900 represents specifically what?

A. Two times $3950, which was allowed to each of us.

Q. And that makes $7900. Now, below that you have "legal amount paid to H. Smith."

A. That's right. That was the $500 that we gave to Hervey Smith on which we intended and did each deduct $250 from our income tax.

Q. And from the fees to be received?

A. That's right.

(T. 316):

Q. And deducting this $500 from the $7900 leaves $7400, and below that you have "less income tax estimated at 25% ," and the figure $1850. Now, explain that item.

A. Well, you take the $500 from the $7900 of our fees leaves $7400, which was the net amount of our fees from which we would be called upon to pay a tax, so you take 25% of that, which is $1850, and leaves an amount of $5550, which would be net to us after he had paid the tax and paid Hervey Smith out of our fees.

Q. All right. Now, then, below that you have "add net amount from Fenner $2500".

A. That's the amount we received from the $3000 check after Fenner had retained $500 for himself.

Q. And that's adding the two together, the $550 and the $2500, it leaves—makes a total of $8050.

A. That's correct.

Q. Now, then, you have divided that into thirds, have you not?

A. I have.

Q. And giving a result of how much you have here?

A. $2683.33.

Q. What does that represent?

A. That represents the amount of a three-way division, one third of it to go to Donald Johnson, one third to Donald Reifsnyder and the same amount to myself. One, of course, would get an extra cent, but it is a division there. (T. 317):

Q. It is $2683—

MR. MARGIOTTI: We are not so particular about that.

MR. PRATT: What?

MR. MARGIOTTI: We are not so particular about that.

THE COURT: The particular penny.

THE WITNESS: I had to add it in the recapitulation.

Q. Now, then, below that—and where is the next place to go on these sheets after the computation that you have already explained?

A. Well, you can follow right through here. This is the figuring on this sheet, the total amount of expenses allowed is $520.05. Now, in order to arrive at the figure that each—both Don Reifsnyder and I were to get you have to take off the sums of $50.90, which was a printing bill and had been paid by Don Reifsnyder and he was entitled to be reimbursed for that.

Q. I see. Then you deduct from the $520.05 this $50.90, which makes $469.15.

A. That's correct.

Q. And that is the amount which is to be divided between you and Reifsnyder's expenses?

A. That's right. And we divided that on an equal basis.

Q. And that leaves for each of you how much?

A. Well, $234.57. And of course you have the odd cent again there.

Q. And the other one $234.58, is that right?

A. That's

(T. 318):

right.

Q. Now, then, again you have on this same sheet the "total pot"?

A. That's correct.

Q. Now, what do you mean by the "total pot"?

MR. MARGIOTTI: Total what?

THE COURT: Pot.

MR. MARGIOTTI: Pot?

MR. PRATT: Pot, p-o-t, the way he spelled it.

Q. Now, what do you mean by these figures under the statement "total pot"?

A. Well, the $8420.05 is the amount of the check that I received from the Maxi Company, added to that the $2500 from Fenner. Added together you get the total of $10,920.05.

Q. Now, do we go to the next page?

A. That's right.

Q. All right: Now, on the next page will you explain your computation there?

A. Well, Mr. Reifsnyder would get $2683.33 in addition to that he would receive one-half of the expenses, $237.57, He would also receive the amount of the printing which he paid out, of $50.90, and the amount deducted for income tax of $925.

Q. That is half of the $1850 that you have on the other sheet, is that right?

A. Yes.

Q. So that the total to which Reifsnyder would be entitled as added-up and figured here by you is how much?

A. $3893.80.

(T. 319):

Q. And the amount to Johnson?

A. Is $2683.34.

Q. You have got it 33 cents. There has got to be an extra penny on one of them.

A. I have changed it down here in order to make it balance.

Q. I see. By adding a cent?

A. That's right.

Q. And the $2683.33 to Johnson is exactly the one third of the net as figured on the previous page?

A. That's right.

Q. Now, then, the amount to which you were entitled out of this money on hand?

A. Well, I would get $2683.33 and the $234.57 and the $925.

Q. For the taxes?

A. Yes. That would add up to $3842.91.

Q. Now, you have allotted Donald Johnson $2683.33 in your figure below, Reifsnyder $3893.80 and yourself $3842.91, and you also have above those figures "Smith $500".

A. That's right.

Q. And you have totaled those items?

A. Yes.

Q. And how much does it make?

A. $10,920.05.

Q. And that corresponds with the total pot that you have on the previous page, is that right?

A. That's correct.

Q. Now, the question that was asked you when you were asked to make this computation, was to reconstruct the figures that Donald Reifsnyder made on these yellow sheets while you were driving in the automobile from Wilkes-Barre to Scranton, is that right?

A. Yes.

(T. 320):

Q. Now—

MR. MARGIOTTI: Are you going to offer the two sheets in evidence?

MR. PRATT: Yes, I will offer these two sheets in evidence.

MR. MARGIOTTI: From my part, I don't know about the others, we would like to have them. We have no objection to them but would like to have them in evidence.

MR. ROBINSON: We have no interest in them.

THE COURT: Well, of course, with this qualification, Mr. Margiotti: that they are not in the strict sense an exhibit in the proceedings except as illustrative of his testimony, and the figures as he computed them.

MR. MARGIOTTI: Well, your honor, for the present I would be satisfied with that ruling but I think later on I would like—

THE COURT: I mean at the present I can see that as the only significance. They may have some importance later, and if they do I will change it, but I want to limit it now so that there is no binding effect in any way upon any of the defendants except to the extent that his oral testimony may do it.

MR. ROBINSON: I wonder, your honor, if photostatic

(T. 321):

copies can be available?

THE COURT: Yes, as long as you keep it down to two sheets of paper we can have photostats. Let them be marked in evidence G-11-A.

MR PRATT: G-11-A and B.

THE COURT: G-11-A and B in evidence.

(Exhibits G-11-A and G-11-B received in evidence.)

Q. Now, Mr. Michael, I show you two yellow sheets of paper marked for identification in this case, Govern-

ment's exhibits G-S-B and G-S-C. I ask you if you have ever seen these papers before.

A. These appear to be the same sheets that were prepared in the car.

MR. MARGIOTTI: Just a minute, please. We ask that you answer the question first. Just answer the question: Have you ever seen them before?

A. Yes.

Q. When did you first see those sheets of paper?

A. Well, in the car the night—in my car on the way from Wilkes-Barre to Scranton on the night of April 24, 1942.

Q. Are these the sheets of paper that you spoke about at the time when Mr. Reifsnyder made the computation which you made an effort to reconstruct?

A. Yes.

MR. MARGIOTTI: Did he say that writing was done that night?

MR. PRATT: Yes, he did.

(T. 322):

MR. MARGIOTTI: I didn't understand that.

THE COURT: He said he saw the writing.

MR. MARGIOTTI: He said he saw them but he didn't say all that writing was put on there that night. Pardon the interruption, but I just wanted to know.

THE COURT: I thought from his testimony, as I understood it, that two yellow sheets were written as they drove along.

MR. MARGIOTTI: That's right.

THE COURT: You mean that the trip was two nights, Mr. Margiotti?

MR. MARGIOTTI: No, no, no, I just wanted to make certain that he says these two papers were written out in full that night on that automobile trip. If that is the case I am not going to have any objection to their introduction.

Q. What is your answer to the question.

MR. MARGIOTTI: I didn't ask him the question.

THE COURT: Let's ask him. Let's not leave it in suspense.

Q. I am asking you the question that was suggested by Mr. Margiotti, whether these papers contained the writing on them that was made at that time by Mr. Reifsnyder while traveling in your car.

A. You mean that all of the writing that is on those sheets I am supposed to say yes or no was put on there (T. 323):
that night?

Q. That is the question that is asked you.

A. I couldn't do that.

Q. Can you tell whether any of these figures and this writing were placed on there that night?

A. Yes. The significant part of it all was placed on there that night because those were the figures that we arrived at.

Q. And the writing that is here was put on there in your presence in the car that night?

A. Yes. The significant part of it all was placed on there that night because those are the figures that we arrived at.

Q. And the writing that is here was put on there in your presence in the car that night. Which of it was, and which was not, if you can distinguish?

A. Well, the way I would distinguish it would be to say that all of that part that is on that sheet, the writing and the figures that are significant and arrive at the totals of $2683 and so on, this part that figures out what each one—each share, were put on there that night.

Q. In your presence in your car?

A. That's right.

Q. Now, what figures are there on either of these sheets which were not put on there on that occasion, if you can tell?

A. Well, I can't tell exactly. Now I would say that the body of this has this figured out. These notations, of course, of the government's exhibits, and so forth were not on there. (T. 224):

Now, this could have been left off, it is not significant. Anything that was significant to the figuring out of the amounts that are over here I would say was put on there that night. This, for instance, this down here, could have been added either before or after.

MR. MARGIOTTI: The significance of that doesn't mean a thing on the record, we don't know what he is talking about.

Q. Now, directing your attention—

THE COURT: I don't know.

MR. PRATT: I will try to clarify it.

THE COURT: Yes.

Q. Now, so far as the paper which is exhibit—so far as the paper which is exhibit G-10-A is concerned, will you

state what part of that paper, so far as the handwriting and the figures are concerned, were not placed there on that night—may not have been placed there that night?

A. I would say that all of the figures above the word "recap," right here,—or let me say it this way: I would say that the figures between the word "recap" and the words "to Hervey Smith" were placed upon the paper that night.

Q. How about the figures at the right?

A. That, of course, includes the figures to the right of the words "Hervey Smith."

Q. Now, then, you excluded, as I understand it, the (T. 325):

figures below "Hervey Smith"?

A. Well, I wouldn't exactly exclude them but I couldn't testify that they were placed on there that night. They could well have been. I see no significance of them, anyway.

Q. Now, taking the other sheet, which is exhibit G-S-C, are you able to state what, if any, of this writing and these figures were not placed there on the evening in question.

A. I would state that the main—I want to include this in here, has anybody got a suggestion how to say it?

Q. What do you want to indicate.

A. Right here (indicating). I would state that body, that particular thing there.

Q. You were sure that was on there that night?

A. Yes.

MR. MARGOTTI: Was or was not?

THE WITNESS: Was.

MR. PRATT: May I have your pencil?

Robert Michael—Cross

Q. Now will you circle with the red pencil—

MR. MARGIOTTI: You better circle with the blue because you used red for the other witness.

Q. Circle with the red pencil, or the blue, as you like, the portion of it which you know was on there on that evening.

A. (The witness did as directed).

Q. While these figures were being put on these sheets, Mr. Michael, were the figures discussed between you and Mr.

(T. 326):

Reifsnyder.

A. Yes.

Q. They were. In detail.

A. Yes.

MR. PRATT: Now I offer these sheets in evidence if the court please.

MR. MARGIOTTI: Before the sheets are introduced, your honor, may I have the right to cross examine him on these two sheets?

THE COURT: Yes, you may.

Cross Examination

BY MR. MARGIOTTI:

Q. Mr. Michael, as I understand your testimony you left Wilkes-Barre and came to Scranton by automobile?

A. Yes.

Q. You were driving the car and Mr. Reifsnyder was seated along side of you?

A. That's right.

Q. Was it a coupe that you were riding in?

A. No, it was a five-passenger or four-door sedan.

Q. Was there any other person in the car?

A. No.

Q. Did you stop at any place along the road, any of the buildings or anything along the road?

A. No, we did not. We stopped—if you mean did we stop and get out of the car—

Q. Yes.

A. No.

Q. Did you stop?

A. Yes, we stopped several times.

Q. How many times did you stop?

A. I wouldn't be able to recollect that.

Q. Well—

THE COURT: Just a moment. You stopped for traffic

(T. 327):

lights and the like?

A. That is what I am referring to.

THE COURT: I think Mr. Margiotti means did you make any stops at houses or restaurants along the way.

MR. MARGIOTTI: That is what I had in mind.

A. I already testified we didn't stop and get out of the car.

Q. As I understand it, the only time you stopped was when you came to a traffic light or a railroad crossing, if you obeyed "Stop, Look and Listen" signs?

A. That would be substantially true, yes.

Q. I see. And this writing was done during the course of that trip?

A. That's right.

(T. 328):

Q. While the car was in movement?

A. That is partly true but not entirely true.

Q. But generally true?

A. Now, if you are going to say that all that writing was done while the car was in motion, that I couldn't answer.

Q. Well, generally isn't that true?

A. No, generally it isn't true.

Q. Well, did you start writing after you left Wilkes-Barre—I mean your associate?

A. Why, shortly after, yes.

Q. Shortly after. And it took you a whole hour to make the trip, because you were going rather slowly, to make the calculations?

A. One hour is an estimate.

Q. Yes. And during that time you were traveling?

A. Except when stopped.

Q. And Mr. Reifsnyder was riding?

A. Except when we stopped, of course.

Q. I understand that, but that was only at traffic lights.

A. No, I didn't confine myself only to traffic lights.

Q. Oh, didn't you?

A. No, as I understand it there was a couple of times, perhaps at a traffic light we would pull off when we stopped for the light, we would hesitate there for a while while he was writing and I would aid him in discussing the figures.

Q. You mean to say now that when you came to a traffic

(T. 329):

light that you waited longer than the time it was necess
for you to get a green light?

A. That's right.

Q. In other words, when you would come to a [gr
light you would stop and there do some writing?

A. Not each and every light.

Q. How many times did that happen?

A. Well, this happened some three and a half ye
ago and any amount that I—any number of times tha
would say would be a pure guess.

Q. Well, give us your best estimate.

A. Oh, three or four.

THE COURT: No, he said it would be a guess.

MR. MARGIOTTI: I don't want him to guess.

Q. Can you give us your best judgment on it?

A. Well, my judgment would be a guess. Now, if y
want a guess I will be glad to guess.

THE COURT: No, I don't want you to guess.

Q. I don't want you to guess. If you have a judgm
on it, all right, otherwise I don't want you to guess.

A. All right.

Q. Now, will you tell me any part of these two pap
that were written while the car was stopped?

A. I couldn't, I couldn't distinguish between wh
was written.

Q. Is there significance in these papers that would i
dicate that the papers were being written while the car w

(T. 330):

travelling?

A. I wouldn't say that I was qualified to answer the question.

Q. No. And did you watch him do the writing?

A. Part of the time, when we were stopped I was watching him.

Q. Part of the time. Did you examine these papers?

A. No, I didn't.

Q. Did you have them in your hands?

A. I can't remember that I ever did.

Q. Did you look to see what he wrote on that particular occasion?

A. No, I wouldn't say that I ever actually examined them.

Q. Well, then, why would you say on Exhibit G.S.C. that everything that is included in blue, circled in blue, was written that night, why did you make that statement?

A. I didn't—will you repeat the question?

Q. (Repeated by the reporter.)

A. I made that statement simply because from the conclusions that were arrived at that night he had to write that, but he didn't have to write the rest of it. This is part of the figuring which went into our further discussions.

Q. You mean, then, that because you had a discussion along that line you then assumed that he wrote down the results of your discussion?

A. I am not quite following you, but I mean—

Q. No, wait. If you are not following me we will have

(T. 331):

the question read and then do follow me.

Q. (Repeated by the reporter.)

THE COURT: Can you answer that, Mr. Michael?

Q. Do you understand the question?

A. No, I don't quite understand the question.

Q. Well, I will have it read again.

THE COURT: No. You see, Mr. Margiotti, you are asking him if he assumes it.

MR. MARGIOTTI: Exactly; because he has already testified, your Honor, that he didn't see him write that and he has already testified that he was talking and he was riding, and it had to be, he said, that he wrote it at that time.

THE COURT: Well, he has already testified, too, that he saw him writing on a pad as they came along.

MR. MARGIOTTI: That's right. But writing what?

THE COURT: I don't know.

MR. MARGIOTTI: I don't, either.

THE COURT: He may have been writing notes to him, I don't know.

MR. MARGIOTTI: No, I don't mean that.

THE COURT: But they were talking about figures; as I understand the testimony they were discussing the division of spoils, or whatever you want to call it, and while this discussion was going on Reifsnyder was making

(T. 332)

computations on paper. Is that right?

THE WITNESS: That's right.

MR. MARGIOTTI: That is what he said.

THE WITNESS: That's correct.

MR. MARGOTTI: That is not what I am concerned about. I am concerned about what he knows that he actually put on a paper that night; whether this is the paper or not is another question. And I want to know whether he actually knows that those particular things were written there that night.

THE WITNESS: I say they were.

Q. Did you see him write them?

A. Yes, I saw him writing them.

Q. You say now that that writing was actually put on there that night because you saw him actually write it.

A. Yes.

Q. Didn't you say a moment ago that you didn't see it, right within the last three minutes in the presence of this jury?

A. Well, no, I didn't say.

Q. Let me have it, please. Now, are we to understand that you can now swear that you actually saw him write what is on these two papers, as you have indicated; are we to understand that?

A. Yes. I say this: that the figures on those two sheets of paper are the same identical figures that we were discussing in our ride. I saw him with the yellow
(T. 333)
sheets of paper, I saw him writing on the yellow sheets of paper, I believe that they are the same sheets.

Q. I am not talking about figures alone. There are other things on these papers besides figures, there is writing on these papers.

A. Well, if he put the figures down, I assume that he put the writing at the same time.

Q. Oh, you assume that.

A. Because he was writing. I wasn't looking right over his shoulder or anything like that.

Q. So that we get it clear. Now, do you say that every one of these figures on the two sheets that you have indicated you actually saw him put on those papers that night on that automobile trip? "Yes" or "No," now, you either did or you didn't.

A. I would say yes.

Q. All right. Now, do you say that all the writing that you have indicated was actually put in there that night? Not that you are guessing at it or assuming, but you actually know that he did. Do you say it?

A. No, I wouldn't say that.

Q. Now, on Exhibit G-8-B what about the figures above "Recap"? You said that everything below "Recap" was written that night, that is, as far as figures were concerned. Now, what about the figures above?

A. I have no idea. I only distinguish for the simple reason that those were significant figures that came out of the conversation.

(T. 334).

Q. All right. Do you know anything about the figures that are in ink above "Recap"?

A. No, I haven't examined them, but I will be glad to.

Q. Well, look at them. I mean, do you know how they got on there? That is what I mean.

A. Oh, no.

Q. Do you know anything about the pencil writing above the word "Recap"?

A. No.

Q. And then it is scratched out.

A. That's right.

Q. I see. Now, we'll take the Exhibit G-8-C. Now, eliminating the—strike it out, please. On G-8-C the figures on the outside of the blue circle you say you know nothing about them?

A. Oh, I didn't say that, I said that as far as I could see they weren't necessary in arriving at this total and, therefore, they could have been put on after.

Q. I see.

A. I have only included that part of the figures that I know to be absolutely necessary to have achieved the result which we did.

Q. All right. Then, so far as these other figures are concerned, because they weren't necessary in your discussion, they could have been written on this paper some time later?

A. Yes, or before, I wouldn't even limit myself to that.

Q. Or even before. I see. Now, so far as the figures are concerned, since these figures bear out the calculation, as I gather from what you said, I may be wrong and I want you to correct me if I am, you assume that they must have been

(T. 335)

written because they were pertinent to your conversation?

A. That's correct.

Q. Of course those same figures could have been written some other time, too, couldn't they?

A. Which other figures are you referring to?

Q. I mean the same figures could have been written at some other occasion?

A. Why, I presume they could have, but they are figures that came up out of a conversation.

Q. I understand that. But you have written, yourself, on the witness stand the identical figures in Government's Exhibit G-11-A and -B, haven't you?

A. I have used—

Q. Will you first answer my question? You have used the same figures, haven't you, the identical figures?

A. Yes.

MR. PRATT: If the Court please, he should have an opportunity to examine them.

MR. MARGIOTTI: If he wants an opportunity he surely can have it.

THE COURT: I assume he made the same computations and I assume if he did them correctly he would arrive at the same results.

MR. MARGIOTTI: What I am trying to arrive at is, that anybody could have made the same computation if they made it over and over again.

THE COURT: There is no doubt.

Q. Then you don't know if these are the two papers that

(T. 3336).

he had that night, do you, that is Mr. Reifsnyder?

A. The only answer that I could give to that Mr. Margiotti, is that those papers were never actually in my possession, therefore I couldn't tell what they are, the exact pieces of paper that were in the car that night.

Q. Exactly. That is what I want to find out. Nobody else does.

A. Anything that is out of your possession is out of your possession.

Q. All right. That answers the question.

(T. 340)

ROBERT MICHAEL resumed the stand and testified further as follows:

Direct Examination (Continued)

BY MR. PRATT:

Q. Mr. Michael, at the time Court adjourned on Friday afternoon you had identified the yellow sheets that were made by Mr. Reifsnyder, and previous to that you had drafted these two exhibits, 11-A and 11-B, reconstructing the figures which you had discussed on your ride from Wilkes-Barre to Scranton. Now, upon arriving at Scranton on that occasion where did you go?

A. Well, I took Mr. Reifsnyder to his home.

Q. When you arrived at his home did you get out of the car once?

A. No, we sat there and talked a little while.

Q. What, at the curb?

A. Yes, right in front of his home.

Q. What was the subject of your conversation?

A. Well, we completed what we had discussed previously and that, namely, was the way that the money should be distributed.

Q. Now, did you go into the house?

A. Yes, I went in.

(T. 341)

the house, was there a few minutes and then went home.

Q. How long were you in the house?

A. Oh, I would say 10 or 15 minutes, maybe 20 minutes.

Q. Did you have any further discussion on this subject during that period you were in the house?

A. No, we didn't, we didn't discuss anything about the division of the money in the house.

MR. MARGIOTTI: What was that answer, please?

THE WITNESS: I say, no, we did not discuss anything in the house in regard to the division of the money.

Q. Upon your leaving did you have arrangements for your next meeting?

A. Yes.

Q. What was said in that connection?

A. I had written out on a piece of paper the amount of the division of money which carried the amount that was to go to Reifsnyder and I went home, and the next morning I came back to Scranton, made out a check on my own personal account to Mr. Reifsnyder in the sum of $3,893.80, I believe.

Q. Did you go to the bank? You had this check of $8420?

A. I had the check of $8420.05 which was made out to me personally, and I was to reimburse Mr. Reifsnyder, or give him his share in that.

Q. Did you deposit that check?

A. I deposited that to my account at the First National Bank.

Q. In Scranton?

A. In Scranton.

(T. 342)

Q. And was that before you drew this check you speak of payable to Mr. Reifsnyder?

A. No, I had drawn that check of $3,893.80, I think it is, in my home, at my office before I came downtown.

Q. Is this the check you refer to?

A. (After examining): Yes, that's the check.

MR. PRATT: Will you mark it for identification, please?

(Exhibit G-12 marked for identification.)

MR. PRATT: The check which has been identified by the witness is now marked Government's Exhibit for identification G-12 and it is now offered in evidence.

MR. MARGIOTTI: May we see that just a second?

(Exhibit G-12 for identification was handed to defense counsel.)

THE COURT: No objection, I understand?

(Defense counsel nodded negatively.)

THE COURT: Let the exhibit be received.

(Exhibit G-12 received in evidence.)

Q. And the endorsement on the check, whose handwriting is that?

A. That is Don Reifsnyder's handwriting.

MR. PRATT: This is a check, ladies and gentlemen, dated "Scranton, April 25, 1942," drawn on the First National Bank of Scranton, "Pay to the order of Don Reifsnyder $3893.80," signed by Robert Michael and en-

(T. 343)

dorsed "Don Reifsnyder for deposit." The perforation shows that it went through the bank—the perforation is, "Paid 4-27-42," April 27, '42.

Q. What day of the week was that?

A. That was a Saturday.

MR. MARGIOTTI: What is Saturday, the day the check was given or the day it was deposited?

MR. PRATT: That is the date of the check.

THE WITNESS: That's correct.

Q. Now, your drive to Scranton during which you had this conversation, that was on Friday, April 24th, is that right?

A. That's right.

Q. And this was the following morning that you gave this check to Mr. Reifsnyder of $3893.80, is that right?

A. That's right.

Q. Where did you meet him that following morning, on a Saturday morning.

A. I met him in his office in the Scranton National Bank Building.

Q. And during the course of the conversation the previous evening, the amount to go to each in connection

with this distribution, was that as indicated on these papers that you drew the other day?

A. Well, we hadn't definitely decided the night before, this was simply a tentative arrangement if we divided the money on that basis. However, I was in favor of only giving the $2,500 which had been allotted.

(T. 344)

Q. Now, in your conversation at Mr. Reifsnyder's office on Saturday morning, what was said in regard to the amount that was to go to Donald Johnson?

A. We decided in the office there—of course the night before it hadn't been definitely decided which, but we were to conclude our conversation at his office and if we did go through with the 25 per cent deduction for income tax, the check that I took to Donald Reifsnyder would be his share. Then I would have to bring in certain cash to make up the balance.

Q. To make up what balance?

A. Well, the balance of the $2,500 because at that time we only had $2,000 in cash.

Q. Reifsnyder had this $2,000 at that time, did he?

A. That's right.

Q. And that is the $2,000 that he received at the Catawissa National Bank?

A. That's right.

Q. And I understand from what you just said that you were to bring the balance, enough to pay Donald Johnson?

A. That's right.

Q. Now, at this meeting at Mr. Reifsnyder's office on Saturday morning what was said?

A. Well, we finally decided that we would give him exactly $2,500, which I made provisions to make up the balance of that money and give it to Mr. Reifsnyder.

MR. MARGIOTTI: Will you keep your voice up, Mr. Michael, please?

(T. 345)

Q. And in order that he might have money enough to pay Mr. Johnson, how much cash did you give Donald Reifsnyder on that morning?

A. It figures out some $591-and-some-odd cents.

Q. How was that computed?

A. There are two ways of computing it. Of course you can figure up what Mr. Reifsnyder got, that is, the check, and you can figure up my share out of it, add the two together and subtract that from $8,420.05 and that would be the difference. Of course actually what it amounts to is the amount of money I paid to Reifsnyder, is the $500 which we paid to Hervey Smith, plus one-half of the difference between $2500 and $2883.33.

Q. Now, let's get that straight, I don't believe that is clear enough to enlighten the jury. Now, how much cash did Reifsnyder have when you went into his office on Saturday morning?

A. He had $2,000.

Q. And how much was agreed to be given to Donald Johnson?

A. $2,500.

Q. Now, how was the $500 then to be made up? He had $2,000 and he had to have $2,500,

A. I took the $591 in so he got the $500 there plus the $2,000 would make it $2,500.

Q. And that was the $2500 for Johnson?

A. That's right.

Q. Now, the additional $91-and-some cents that you gave him, how was that computed?

A. Well, the check that I had made out and presented to him that morning was made out on the
(T. 346)
proposition that Johnson was to get $2683.33.

Q. You mean the check that you had given him for $3893.80, that was on the basis that Johnson was to get $2683?

A. That's correct.

Q. So that when you decided to give him just $2,500 you then owed, you owed Reifsnyder half the difference?

A. That's right.

Q. That was $91-and-something?

A. That's right.

Q. Now, how long were you in his office on that occasion?

A. Not very long, I would say probably a few minutes.

Q. And was anything said then between you as to when and how the $2,500 was to be given to Donald Johnson?

A. No, we hadn't decided or come to any agreement. I assumed that Mr. Johnson would come to Scranton and pick it up.

MR. MARGIOTTI: Now, wait a minute, just a second. I ask that the assumption be stricken from the record.

THE COURT: Yes.

MR. MARGIOTTI: Please don't testify to assumptions.

THE COURT: Yes. Let it be stricken. Have you any way of knowing that he was to go to Scranton or did come to Scranton?

THE WITNESS: There was no arrangement made at that time or known.

Q. All right. Now, you then left the office?

A. That's

(T. 347)

right.

Q. Where did you go?

A. I went back to the club.

Q. To the Scranton County Club?

A. Scranton County Club, yes.

Q. And Saturday at the country club is rather a busy day?

A. Yes, it is.

Q. What time did you get back to the country club?

A. I couldn't be sure of that. If I had errands to do in Scranton it might have been noon, or if I didn't have I might have been back—

MR. MARGIOTTI: Just a minute, please. Why all these "ifs" and "ands"? If he doesn't know answer he doesn't know and that is the end of it.

A. I don't know.

MR. PRATT: Let me reframe the question.

MR. MARGIOTTI: I don't care. Withdraw this objection, please.

Q. You arrived back at the country club before noon, did you?

A. I would assume so, yes.

Q. Now, did you have any further—on that day did you have any contact with the defendant Donald Johnson?

A. Yes, Mr. Johnson called me up that afternoon.

Q. Do you know what time he called you?

A. I couldn't be sure, no.

Q. That was on the telephone?

A. That's right.

(T. 348)

Q. Long distance?

A. Yes.

MR. MARGIOTTI: What afternoon was this, Mr. Pratt?

THE WITNESS: Saturday, apparently.

MR. MARGIOTTI: Was it a Saturday?

MR. PRATT: This was Saturday.

THE COURT: Still on Saturday, I think.

MR. PRATT (Continuing): That we are talking about the 25th of April.

Q. Is that right?

A. Yes.

Q. And on the occasion of this telephone call, first, about when was it? What time of day was it, as near as you can tell?

A. I would have to estimate it. It was probably sometime in the afternoon.

Q. What was said on the occasion of that telephone call?

A. Well, he asked me if we had completed the deal at Catawissa and I said that we had, and he said, "How did everything turn out?" I said, "It was all right." And I said; "You see Donald Reifsnyder." And he said well he would, he might be up the next day.

Q. Was that the whole conversation?

A. The substance of it, yes, as far as I can remember.

Q. And do you recall anything else that was said on that occasion, on that telephone call?

A. Well, he asked me if the deal had been completed satisfactorily.

(T. 349)

Q. Well, you already stated that.

A. Yes.

Q. Have you stated the substance of what was said?

A. I think I have, yes.

Q. That was Saturday. Now, when did you next see Mr. Reifsnyder?

A. Well, the next afternoon was Sunday.

Q. Sunday afternoon, that would be April—

A. April the 26th.

Q. April 26th.

A. Mr. Reifsnyder and Mr. Johnson were at the club late in the afternoon.

Q. Did you see them and have a talk with them?

A. Yes. I had contact first down in the locker room and—

Q. What was said?

A. Well, Mr. Reifsnyder said that he would like—that the two of them wanted to have conversation, have a little talk with me.

Q. Was there anyone else present at that time?

A. Yes, there were several people around in the room.

Q. What then occurred?

A. Well, I went up into the grill room to see if there was anyone up there, there wasn't, and I came back down and said, "Come on up in the grill room, there is nobody up there." So we went up in back of the grill.

Q. By "we" who do you mean?

A. Donald Reifsnyder, Donald Johnson and myself, and there we had a conversation.

Q. Will you relate what was said then?

A. Well, Mr. Johnson objected to the amount that he had received or said

(T. 350)

he had received, $2,500, that he thought he was entitled to one-third of the total amount of the fees plus the $2,500.

Q. What $2,500?

A. That was the net amount from Fenner. And I pointed out that we were not sure of what the income tax would be on the fees allotted to us, that it was a pure guess as to what we would have net out of the $3950 which had been allotted to us, and I thought it was only fair, in view of the circumstances, that $2,500 was ample and fair.

Q. What did he say to that?

A. Well, he didn't accept it in too good a mood, but at the same time not too bad, Mr. Reifsnyder said to him,

"Well, I will tell you, Don, after we have paid our income tax," or "After I have paid my income tax, I will keep, or I'll show you my return and I'll keep a record of how we computed this payment and if my income tax is less than the amount which I have retained for that purpose, I will be glad to give you another payment to make it balance." And he said, "I will even write a letter to that effect if you want it."

Q. What did Donald Johnson say to that?

A. Well, he apparently agreed to it. I can't remember his comment. He said, "Well, if that's the way it is, that's the way it is."

Q. On his first statement do you remember with any more definiteness what Mr. Johnson said in making his complaint at receiving only $2,500?

A. Well, he complained that he was about $900 short of what he should have.

(T. 351)

Q. And did he state how he computed this $900 shortage in the amount he was paid?

A. Well, if you add $7,900 and $2,500 and divide by three, you will get approximately $3,300-and-some dollars.

Q. Which is about $900 more than he got?

A. I think it is $3366; it would be $866 difference.

Q. Now, was anything specifically said on that occasion about the $2,500 that had come from the Fenner check? Do you recall?

A. You mean by Donald Johnson?

Q. By any of them.

A. Well, I mentioned the fact at that time that I thought the $2,500 was a fair distribution and that I would

not be in favor of going any further because that would mean a splitting of our fees.

Q. My question is was anything said about the source of the $2,500.

A. Oh, the source of it. Why, I can't remember whether it was at that time or not ever discussed.

Q. Mr. Reifsnyder, do you know what the name—

A. Mr. Michael.

Q. (Continuing): —the telephone number—Michael, excuse me. Do you know what the telephone number at the country club was at that time?

A. 371.

Q. It is the same now, isn't it?

A. I think it is, yes.

Q. Now, in the course of your handling of this estate of the trusteeship of Central Forging Company, did you have any acquaintance or familiarity of any sort with the file that was

(T. 352)

in Mr. Reifsnyder's office?

A. Yes, I had a file of all the papers or copies of all the papers, petitions, orders.

Q. Where did you keep them?

A. It was kept in Mr. Reifsnyder's office except when we were going down to Catawissa we always took it with us.

Q. I show you this Government's Exhibit, No. 8-A, this entire file. I will ask whether you can identify that file.

A. Yes, this is our file.

Q. And when you say "our file" what do you mean by that?

A. Well, in reality it was a joint file.

Q. Was that the only file you had?

THE COURT: What do mean, yours and Mr. Reifsnyder's? Is that what you meant by "joint file"?

THE WITNESS: Yes; all of the papers were kept in Mr. Reifsnyder's office due to the fact it was more convenient, and when we were doing consulting on Central Forging matters I would go to his office the file was there, he had facilities for it.

THE COURT: Let me ask you this, Mr. Michael: During the conduct of these proceedings were the operations of the business, such as they were, carried out from Mr. Reifsnyder's office?

THE WITNESS: You mean the business or the trusteeship?

THE COURT: The trusteeship.

(T. 353)

THE WITNESS: Yes, all of the papers—

THE COURT: In other words, you had no office of your own during that time?

THE WITNESS: Well, I had an office but I didn't keep any papers in it, it was all done by Mr. Reifsnyder.

THE COURT: What I mean, when you became trustee you didn't set up a separate office, separate and apart from the office you had at the country club?

THE WITNESS: No.

THE COURT: All right.

THE WITNESS: No, all papers, if I got any directly I would turn them over to Reifsnyder for the purpose of filing them.

THE COURT: All right. Go ahead.

Q. Now, I direct your attention to this exhibit which is G-1-I, entitled, "First and Final Account of Robert Michael, Successor Trustee", filed on July 9, 1943. This has a lot of figures and also attached to it are a lot of vouchers in the form of cancelled checks. Who drafted that first and final account?

A. Why, this was drafted in Mr. Reifsnyder's office by himself.

Q. What, if any, assistance did you give to him in drafting that document?

A. Well, I don't think I needed to give him any. This is merely a copy from the record. I looked it over after it was drawn up and signed it.

(T. 354)

Q. And the signature on this, on the last page, "Robert Michael," that is your signature, is it?

A. Yes.

Q. And below the affidavit "Sworn to on the 8th day of July before Mary S. Hunter—"

A. That is my signature.

Q. "—Notary Public," that is your signature, is it?

A. (Witness nodded affirmatively.)

Q. Now I direct your attention to this report, to the first subject heading, which is as follows: "The accountant charges himself as follows:" and I direct your attention under that heading to the item "Accounts Receivable and Unassigned, Adjusted, $20,534.50." Now, is that the same

item that appeared in your report to the Court dated April 14, 1942?

A. That's the same account.

Q. And what do you say as to the accuracy of that amount?

A. Well, that amount is short $3,000.

Q. For the same reasons that you stated in connection with the other report?

A. Yes.

THE COURT: Let me ask you several questions in that regard, more to the factual situation. Does that report, as finally filed, reflect the receipt of the $3,000 which was represented by this check payable to Mr. Fenner?

THE WITNESS: No, it does not.

THE COURT: Does that report reflect anywhere the payment to Mr. Fenner of $3,000?

(T. 355)

THE WITNESS: No, it does not.

THE COURT: Does that report reflect anywhere the payment of any sum, $2,500 or any other fee, to Donald Johnson?

THE WITNESS: Well, it only—no, it doesn't reflect it.

THE COURT: It doesn't reflect any fee?

THE WITNESS: No.

THE COURT: Now, during these entire proceedings was Mr. Fenner in any way, other than the way in which you described, officially connected with these proceedings?

THE WITNESS: No, he had no official connection with the trustee at all.

THE COURT: Had he performed any work for you as trustee?

THE WITNESS: No.

THE COURT: During these proceedings was Mr. Fenner allowed any fee by the Judge of this court who had charge of these proceedings?

THE WITNESS: No.

THE COURT: All right, go on, Mr. Pratt.

BY MR. PRATT:

Q. Now, Mr. Michael, after all of these proceedings, which apparently had concluded with your first and final

(T. 356)

account filed a year later than this division of money you have spoken of, namely, the account filed on July 9, 1942, after that do you recall that there was some investigation of these matters relating to the trusteeship of the Central Forging Company?

A. Yes.

Q. And do you recall that you were interviewed by various people?

A. I was.

Q. By whom were you interviewed?

A. Well, I don't think I could name them all. There were several Federal Bureau of Investigation men and, of course, I was interviewed also by the various assistant Attorney Generals here and questioned before the Grand Jury.

Q. Now, you were before the Federal Grand Jury on a number of occasions, were you?

A. Yes, I was.

Q. And about the occasion of the first few of your appearances before the Grand Jury, were you inquired of concerning this trusteeship of the Central Forging Company?

A. Yes, I was.

Q. Did you at that time tell the same story you told on the witness stand on this present occasion?

MR. MARGIOTTI: Objected to as being immaterial. It is not for the Government to develop that.

THE COURT: You mean that it is immaterial if the Government should attempt to develop it but it should become material if you should attempt to develop it?

(T. 357)

MR. MARGIOTTI: Yes, because that is a subject for cross-examination and could not properly be introduced on direct examination.

THE COURT: You see, as a matter of trial strategy I suppose it is also material as a frank disclosure by the Government and the witness.

MR. MARGIOTTI: Of course my position is that that is really a matter for the defense to develop if it is to be developed at all, and not for the Government because they are seeking to impeach their own witness when they do that.

THE COURT: Not necessarily.

MR. MARGIOTTI: Well, I think so. And, furthermore, the only purpose of doing it that way is because

they anticipate the development on the part of the defense and, therefore, tried to take the sting away from it.

THE COURT: And of course having anticipated your trial strategy you object to it?

MR. MARGIOTTI: No, it isn't a question—

THE COURT: If I have an assurance from counsel that it is immaterial on any basis and no one intends to pursue it, I shall sustain the objection, otherwise I shall permit Mr. Pratt.

MR. MARGIOTTI: No, you can rest assured—

(T. 358)

THE COURT: (Continuing): And let the witness be as perfectly frank about it as he cares to be. But if you think it is not material from any standpoint, I will sustain the objection.

MR. MARGIOTTI: No, I said it is immaterial from the Government's standpoint, not ours.

THE COURT: No, I will let Mr. Pratt ask that question and the witness answer it and your objection is overruled and you may have an exception.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U.S.D.J.)

MR. LEVY: I would like to object on behalf of Mr. Knight upon the grounds that presently it is immaterial and is not the subject of direct examination.

THE COURT: No, I'll let him answer it.

MR. MARGIOTTI: Now, your Honor, may I be heard on one other matter?

THE COURT: Yes, surely.

MR. MARGIOTTI: Now I ask that if the Government is going to establish that this witness testified differently before the Grand Jury, that the best evidence is the notes of the Grand Jury and that they should be introduced in place of his recollection of what he testified to.

(T. 359)

THE COURT: I don't know how far he is going with this, Mr. Margiotti. If he goes into the substance of the testimony it may be one thing. The only question that is pending now, as I recall it, is whether or not his testimony before the Grand Jury was the same as it is here.

MR. MARGIOTTI: Well, isn't that the substance?

THE COURT: No, his answer to that is it is or it isn't the same.

MR. MARGIOTTI: All right.

THE COURT: Now, if he goes into the differences that may arise, then, of course, the best evidence of what the difference is is the record.

MR. MARGIOTTI: That's right. I will withdraw my request and wait the further development in accordance with the suggestion of the Court.

THE COURT: It might be better.

MR. MARGIOTTI: All right.

THE COURT: Read the question, Mr. Barrows.

(Read by the reporter.)

A. No, I did not.

Q. Why did you not?

Colloquy

MR. MARGIOTTI: That is objected to.

THE COURT: Well—

MR. MARGIOTTI: No, I will withdraw that.

THE COURT: I see one way that that could be—

(T. 360)

MR. MARGIOTTI: I will withdraw it—I am going to withdraw my objection.

THE COURT (Continuing):—pertinent here, but I don't want to say it.

MR. MARGIOTTI: I will withdraw my objection. Let's hear why it was different here than there.

A. I had the choice of being an informer against myself and my friends or my associates, or of telling an untruth, and I elected to tell an untruth, or to deny knowledge of these happenings.

Q. Now, on a later occasion you were—there was a proceeding against you for contempt of court, was there not?

A. There was.

Q. And on still a later occasion there was an indictment against you which involved your activities in connection with the Central Forging Company matter?

A. There was.

Q. And to that indictment you pleaded guilty, did you not?

A. To one part of it.

Q. To one part of the indictment?

A. Yes.

Q. And as to that have you been sentenced by the Court?

Robert Michael—Cross

A. No, I have not yet.

Q. You were sentenced in the contempt charge, were you not?

A. That is correct.

Q. What was that sentence?

A. I was sentenced to six months in the County Jail. I served 11 days of it and then

(T. 361)

was released on an appeal.

Q. And the case is now pending on appeal, is it not?

A. Yes, it is still awaiting for a decision.

Q. Finally, after your plea of guilty in the former criminal case you went back again before the Grand Jury, did you?

A. Yes, I did.

Q. Was there any difference, any substantial difference between your testimony on that occasion and the testimony you have given here to this Court?

A. No, the story I told on the last two times before the Grand Jury is substantially or identically the same as I have told here today.

* * * * * * *

(T. 367)

Cross Examination

BY MR. MARGIOTTI:

* * * * * * *

(T. 379)

Q. Mr. Michael, you became a trustee of the Central Forging Company, the debtor organization in reorganization, about January 1, 1942?

A. Yes.

Q. That is, the appointment was made a few days earlier but your term began about January 1, 1942?

A. Yes.

Q. And you went to the plant of the Central Forging Company down at Catawissa when you assumed your duties?

A. Yes.

Q. And you made an examination not only of the plant but, I presume, of the books of this company?

A. What day are you referring to now, the first trip?

Q. The first trip or the second trip, somewhere you made an examination not only of the plant but of the books of the company.

A. Well, I examined the financial statements. I didn't go all through the books, I am not an accountant and I wouldn't be qualified to go into much of the books.

Q. They had a bookkeeper there, did they not?

A. They did; several.

(T. 380)

Q. And they kept a regular set of books?

A. That's right, yes.

Q. Some of which the Government has shown you?

A. Well, the only thing I remember in evidence here now is a statement of the Dobson Accounting System. Now, if you call that a book of the Central Forging Company, my answer is "Yes."

Q. No, I don't refer to that, I mean the books of the Central Forging Company; have they ever been shown to you by any FBI man or by any Government attorney?

A. No to my recollection, no, I don't believe I ever saw any of them.

Q. But you did see the books when they were down there?

A. Oh, yes.

Q. And you had access to those books from time to time, did you not?

A. I had access to them if I wished to, yes. They were actually in my custody as trustee. However, I never exercised that right.

Q. At any rate, you knew did you not, that there were accounts receivable due and owing to the Central Forging Company by various creditors?

A. Oh, yes.

Q. Now, when you took possession and charge of the Central Forging Company on January 1, 1942, you knew at that time there were accounts receivable in the sum of approximately $23,534, did you not?

A. That information was available to me, yes.

Q. And you knew that of that amount there was in the

(T. 381)

hands of the bank on assignments by the former trustee approximately thirteen thousand—some-odd-hundred dollars, was there not?

A. If that figure is correct as of that date, that is true.

Q. And you also knew that the bank had loaned approximately $9,500 of that money, did you not?

A. If that figure is correct, that is correct.

Q. And you also knew that that $9,500 that was loaned by the bank, upon which these accounts were discounted and assigned, was all used by the prior trustee, did you not?

A. Yes, that's true, if those figures that you are quoting to me are true. I couldn't determine that without an examination of the records.

THE COURT: In other words, as I understand your testimony,—I ask this only so there will be no dispute about it—your had knowledge of these facts although you do not recall at this time the exact figures involved, is that it?

THE WITNESS: Yes.

THE COURT: And if Mr. Levy's figures are according to the books and records of the company, you are willing to adopt them?

THE WITNESS: That's right.

THE COURT: All right.

Q. And you knew that in the Dobson statement, which
(T:382)
you have testified to here, that there was only cash on hand when you went into the business of $133, did you not?

A. That—

Q. Cash on hand and in the bank.

A. That's right.

Q. I show you a general ledger which contains the customers accounts, and I ask you whether that is the general ledger that was in use by the Central Forging Company.

A. I cannot so testify.

Q. You don't know whether that is the book that you had in your charge and under your keeping?

A. That's right I relied entirely upon the services of Homer Davis and the Dobson reports. I am not familiar with the bookkeeping system.

THE COURT: In other words, as I understand it, during your entire trusteeship you at no time made an examination of these books personally?

THE WITNESS: No, not with the idea of examining the books. That book might be one of those that were there, I can't say that it wasn't, but not being an accountant, not being familiar with the general bookkeeping system, I couldn't testify that that book was ever in the plant. I presume it was, though.

THE COURT: All right.

MR. LEVY: May I have the Dobson report, please?

Q. You do recognize, Mr. Michael, the Dobson report, which is marked Government's Exhibit No. 10?

A. Yes.

Q. Now I ask you, have you examined this?

A. I have.

(T. 383):

I couldn't answer questions from memory on any part of it, though.

Q. No, but when you made up your trustee's report, your successor trustee's report, you examined it?

A. Oh, definitely.

Q. Now I ask you how much were the accounts receivable that were unassigned and owned by the Central Forging Company in that Dobson statement?

MR. MARGIOTTI: As of what date?

MR. LEVY: As of December 31, 1941.

A. $10,250.83.

Q. And what was the amount of the assigned accounts?

A. $13,283.67.

Q. And those were the accounts that were assigned to the Catawissa National Bank?

A. That's correct.

Q. How much was owing, according to Dobson's statement, on those accounts to the bank?

A. $9,690.16.

Q. Now, will you look at the next page, Mr. Michael, and tell me if there is a breakdown of the accounts receivable? In other words, are they itemized?

A. They are.

Q. And will you tell us whether there is an account receivable due to the Central Forging Company by the Maxi Manufacturing Company?

A. There is.

Q. Will you tell us the amount of that accounts receivable?

A. $2,443.26.

(T. 384):

Q. Is that the accounts receivable? I asked for the accounts receivable, not the accounts payable.

A. I am sorry. $3,086.27.

Q. That is, according to the books, of the $23,534 of accounts receivable there was one that was owed by the Maxi Manufacturing Company in the sum of $3086.27?

A. Yes.

Q. On December 31, 1942?

A. That's right.

Q. Or '41. I show you a book called a collection report and ask you whether you have ever seen that book down at that plant. That is the book that takes care of the assigned accounts.

A. I could have.

Q. Before I go into that let me ask you whether the signatures on these original certificates of indebtedness and the assignments of accounts, "Robert D. Michael," are your signatures?

A. They are.

Q. Now, those accounts are the accounts that were assigned by you before April 24, 1942?

A. They would cover the period from the 1st of January, 1942, up until the time that the Maxi Company took over the plant.

Q. No, I don't mean that. These particular ones, are those that were assigned by you before April 24, 1942 and were paid off before that date.

A. Well, I couldn't answer that, I would have to check into them all over.

Q. Will you take a look at them?

A. These are the ones—your question is (these are the ones that were assigned

(T. 385):

and paid off before the 24th of April, is that it?

Q. That's right.

MR. PRATT: What do you mean, "paid off"?

Q. Assigned by you, Mr. Michael.

A. As trustee?

Q. That's right.

MR. PRATT: What do you mean, "paid off"?

MR. LEVY: Paid by the—

MR. PRATT: Debtor?

MR. LEVY: —debtor.

THE COURT: Of course that wouldn't be an account receivable, it was paid by the debtor.

MR. LEVY: The debtor, or who owed the account.

THE COURT: I was thinking of the debtor—Central Forging Company.

MR. LEVY: No, I don't refer to that.

THE COURT: Paid by the debtors of Central Forging Company.

MR. LEVY: Paid by the debtors who owed the account.

MR. PRATT: Who owed Central Forging Company?

MR. LEVY: Who owed Central Forging Company, yes.

A. Well, I can't find on here where this was ever paid, as far as that goes.

Q. Well, now, let's get the practice and let's see if we can—

A. Do you want me to give you the practice? (T. 386):

Q. Well, let me ask you some questions on that.

A. All right.

Q. Whenever you, as trustee, needed any money you would assign your accounts receivable to the Catawissa National Bank, who would advance the money to you, is that correct?

A. Yes. Of course that was, all the mechanics, was entirely in the hands of Homer Davis and he would simply give me these things, it is in the form of an assignment and

a note, and I would sign it and he would take it down to the bank and our account would be credited to that amount.

Q. And when the Central Forging Company collected the money they made a report, did they not, to the Catawissa National Bank?

A. That's right.

Q. Showing how much they received on each of those accounts?

A. That's right.

Q. Showing that they were collecting for the Catawissa National Bank?

A. I assume that that was the mechanics of it, yes.

Q. And the book I show you is that collection report that contains some printed matter to the Catawissa National Bank, together with the items, the name of the debtor and the amount of the invoice and the cash remitted on each occasion?

A. Well, that's apparently the collection report of which I am not familiar and never was too familiar with.

Q. Now, I want to show you those accounts that were

(T. 387):

assigned by you and which were in effect on April 24, 1942, and ask you whether these contain your signatures. That is the accounts receivable that were assigned to the Catawissa National Bank by you as trustee prior to April 24, 1942 and which were in effect on that day?

A. These papers all bear my signature. Now, the answer to the rest of the question, I would have to check them all over to see whether they were in effect. I couldn't testify offhandedly like that. I'll testify that they all bear

my signature. (After examining): These papers all bear my signature.

Q. Now, Mr. Michael, coming back to the Dolison report.

MR. PRATT: If the Court please, there are hundreds of papers.

MR. LEVY: I have identified them.

MR. PRATT: And were identified separately; it seems to me they should bear some notation here as exhibits in some way.

MR. LEVY: I intend to.

THE COURT: That is true, they should, but as far as the witness goes, the extent of his knowledge is indicated by his answer that all he can do is identify his signature as to these papers. I think for the purposes of the record the exhibits should be marked at this time.

MR. LEVY: If your Honor please, I desire to mark

(T. 388):

for identification Defendant's Exhibit No.—

THE COURT: This will be D(K)-1.

MR. LEVY: D(K)-1, which are the assigned accounts by Mr. Michael before April 24, 1942 and paid off before that date.

MR. PRATT: The statement of counsel is an assumption. I don't recall that the—

THE COURT: It is merely for the purpose of identification.

MR. LEVY: Identification.

THE COURT: The factual statement in there doesn't bind anyone because no one has said that up to the moment.

MR. LEVY: That's right.

THE COURT: No witness.

(Exhibit D(K)-1 marked for identification.)

MR. LEVY: Now we offer Defendant's Exhibit D(K)-2, which are the assigned accounts by Michael and in effect on April 24, 1942.

(Exhibit D(K)-2 marked for identification.)

MR. LEVY: That statement only being marked for the purpose of identification. And at this time I also desire to offer in evidence the collection report book of the Central Forging Company.

THE COURT: Well, let's let it be offered for identification.

(T. 389):

MR. LEVY: Not in evidence, just for identification. I take that back.

THE COURT: Just for identification.

MR. LEVY: Strike it, please. We now ask that the collection report book of the Central Forging Company under the charge of Robert Michael be marked for identification Defendant's Exhibit (K)-3.

(Exhibit D(K)-3 marked for identification.)

THE COURT: While we are at it why don't we mark the large one, too? Unless you are not going to use it, Mr. Levy.

MR. LEVY: We are not going to use it at present.

THE COURT: Let it remain unmarked, then.

MR. LEVY: I think it will have to remain unmarked.

THE COURT: Yes, the witness doesn't recall having seen it.

MR. LEVY: That's right.

BY MR. LEVY:

Q. Now coming back to the Dobson report, Mr. Michael: You have already told us that in the assigned accounts as of December 31, 1941, there were thirteen thousand—there were twenty-three thousand five hundred and thirty-four dollars and some-odd cents.

A: $23,534.50.

(T. 390):

Q. And that included not only those accounts that were assigned to the bank but the accounts that were unassigned?

A. That's right.

Q. And that in a breakdown of those accounts that you find an account by the Maxi Manufacturing Company, the purchaser or the person who took over under the plan of reorganization the Central Forging Company in the merger, that they owed the Central Forging Company, under your trusteeship, $3,086?

A. And 27 cents.

Q. And 27 cents.

MR. PRATT: What is that amount?

THE COURT: $3,086.27.

Q. Now I show you a check of the Maxi Manufacturing Company dated January 20, 1942, "Pay to the order of the Central Forging Company $3,086.27," drawn on the Catawissa National Bank and endorsed "Pay to the order of the Catawissa National Bank, Catawissa, Pa., Central Forging Company."

MR. PRATT: Let's see it before it is read.

(The check referred to was handed to Mr. Pratt.)

MR. PRATT: O. K.

MR. LEVY: Pardon me.

Q. And perforated as paid 1-29-42.

MR. PRATT: The paper is not in evidence, if the Court please.

Q. And I ask you whether that check is in payment of the

(T. 391):

account receivable that you just referred to.

A. Well, it is obviously the same amount but I have no knowledge and couldn't testify anything about it. The bookkeeping accounts were handled entirely by Homer Davis and his assistants, and while they were under my direct control in a sense, I, of course, relied upon the Dobson Reporting and Accounting System to check them, so I probably never saw this check or any other checks that were ever given to us in payment of any bills.

Q. And you can't tell us whether that check in payment of that account receivable—

I could only in so far as they are the exact amounts. I have the record here and it shows that the—

Maxi Manufacturing Company owed the Central Forging Company the sum of $3,000—or $3,086.27. Here is a check made out by the Maxi Company to the Central and it is endorsed and deposited to the Central Account and is undoubtedly the full payment of that account.

Q. Now I show you Defendant's Exhibit No. D(K)-3, which is the collection reports, and I ask you whether that collection report doesn't—I ask you what it shows in reference to the Maxi Manufacturing Company account.

THE COURT: You see the trouble, Mr. Levy, we are getting all this proof in by indirection. I don't know at this stage of the proceedings whether that book is what you say it is, I don't know whether or not that

(T. 392):

check is in payment of the account that you say it is because of the lack of knowledge on behalf of the witness. Now, having him read figures from this book will only lend confusion because he doesn't speak of his own knowledge. I can read it, for that matter.

MR. LEVY: If your Honor please, this book he says he knows about, this is the collection report book.

THE COURT: Why ask him to read it? He said he saw it and he assumes that is the book, as I recall his answer with reference to this book. He used the words "assume" and "apparent" but manifested no personal knowledge of it and thus far in his testimony he frankly admits no personal knowledge of the check except as he said the amounts are in conformity. Now, you ask him to read from a record that he had no knowledge of, he never kept and is not in these proceedings at this stage.

Q. Mr. Michael, I ask you whether Defendant's Exhibit (K)-3, the book that you hold, collection report, is the book that was kept in the regular course of business under your trusteeship.

A. Mr. Levy, I can't answer that. The only thing I can say in regard to that is that there was a set of books kept down there and I assumed and believed that they were properly kept and accurately kept and Mr. Dobson's reports to me reflected the fact that they were adequately kept. I knew we had to assign, we had an arrangement with the

(T. 393):

Catawissa National Bank, I didn't create it, I simply continued an arrangement that had been set up there.

THE COURT: Mr. Michael, let me ask you one question: Can you now, of your own knowledge, testify that that was one of those books?

THE WITNESS: No, I can't. I knew there was a book, that there had to be a record kept of these payments and I can assume that this is, but I can never retain in my mind that three years and a half ago when I was there that I ever looked or went through this book, I couldn't do it.

Q. That is, you never looked through that book so far as your recollection is concerned?

A. That is correct.

THE COURT: Let that check be marked for identification.

MR. LEVY: We ask that the check be marked for identification D(K)-4.

(Exhibit D(K)-4 marked for identification.)

Q. Mr. Michael, you say as trustee that there were certain books in the Central Forging Company plant under your trusteeship?

A. I do.

Q. And you know that Mr. Dobson had audited those books?

A. That's right.

Q. And the books, you told us, were under your charge and keeping, whether you looked at them or not?

A. Well, that

(T. 394):

would be the assumption, yes.

THE COURT: Charge without keeping, Mr. Levy, there is no doubt about it. As trustee he is charged with that responsibility.

MR. LEVY: That's right.

THE COURT: The difficulty is, it doesn't aid us here unless he can say these are the books, you see.

MR. LEVY: I am going to ask him now, if your Honor please, even though it may take time to go through the very books that were in his charge and keeping and let the Court and jury know whether these are the books and whether the figures therein are correct.

THE COURT: Well, of course that is going to be difficult from his previous statement that he never kept the books and he never looked through them but relied on Dobson.

MR. MARGIOTTI: And Davis.

THE COURT: You mean you are going to have him conduct an audit during the course of this trial. I don't know that he is even competent to do it.

MR. LEVY: I am going to have him testify to the correctness of these books that were under his charge and keeping as trustee of this estate.

THE COURT: Well, go ahead. I will be interested in seeing how you can do it.

(T. 395):

MR. LEVY: I am going to ask the witness.

THE COURT: All right, go ahead and ask him.

MR. LEVY: I will take the time on this examination to let us know whether those books are the correct books of this institution under his charge and keeping as trustee.

THE COURT: Go ahead.

Q. Mr. Michael, will you examine Defendant's Exhibit No. 3 and tell us whether that book, which was under your charge and keeping as trustee, correctly reflects the trusteeship and the accounts of that trusteeship?

MR. PRATT: I object to this question because it assumes.

THE COURT: The objection is sustained, it assumes a fact that has not yet been proved. In fact it assumes a fact that is the very essence of this proof. That is my difficulty. Surely there is someone knows, but it may not be this witness, it may be Mr. Dobson

knows. Is Mr. Dobson dead, gentlemen, may I ask, or the man who did this work?

(Defense counsel nodded negatively.)

MR. LEVY: If your Honor please, it doesn't seem to me that we have got to go into our defense if we can prove by the man who has charge of the books—

THE COURT: I'll agree.

(T. 396):

MR. LEVY: Legally prove.

THE COURT: I know, but you see here is the situation with it: I perfectly realize and know the provisions of the statute that would make these books and records admissible. The proof requires that it be established that the books are books kept in the regular course of business and that the books in question are the books kept in the regular course of business; two elements, neither of which do we have. I don't know, I am not requiring you to go into your defense and I want to be as liberal with you as possible, but I don't want this proof to reach the stage where the witness may be guessing and assuming and drawing conclusions when there is some other proof available.

MR. LEVY: If your Honor please, the Government has offered in evidence here Mr. Dobson's report.

THE COURT: Over no objection.

MR. LEVY: Over no objection, that's correct?

THE COURT: Right.

MR. LEVY: Now I ask the Government to say whether or not the books which were the basis of the Dobson reports are the books of the trustee, these very books that we have now identified.

THE COURT: Mr. Levy, the Dobson report, as I recall the testimony, and the limited purpose of the offer,

(T: 397):

was the basis for the closing on April the 24th. In other words, both sides accepted that report as truly reflecting the condition of the company as of December 31, 1941, and that date, regardless of the things that happened subsequent thereto, was the actual date of closing, although the physical operation took place in April. Now, as I understand the testimony in this case, and I may be mistaken in this, and if I am, the jurors will draw on their own recollection, the Maxi Manufacturing Company in anticipation of the purchase or merger or consolidation, whatever you want to call it, went into operation of the business, actual operation of the business on January 1st or shortly thereafter, 1942, and continued to operate until the matter was actually consummated; the deal or plan, whatever it was, on April 24, 1942. Now, you want the Government to concede that these were the books from which Dobson got these figures. That doesn't help me. I don't know the purpose of all of this, to begin with. I don't want to foreclose you and I am not insisting that you disclose your defense in full at this stage, but I must insist on strict proof of any records in this case as I would if they were now offered by the Government. If the Government attempted to offer

these records at this stage of the proceeding, I would likewise insist that they produce some witness who could

(T. 398):

identify these records as the books and records kept by the Central Forging Company in the usual course of business.

MR. LEVY: All right, if your Honor please; we will proceed and see if we can't get them in some other way.

May I see Mr. Reifsnyder's letter of February 17?

MR. PRATT: What?

MR. LEVY: Reifsnyder's letter of February 17.

MR. PRATT: We have no such letter that I know of.

MR. LEVY: Or a copy of Reifsnyder's letter from Reifsnyder's file.

THE COURT: Is it an exhibit marked?

MR. LEVY: It is an exhibit, if your Honor please. The testimony now is that it was the joint file of the witness and Mr. Reifsnyder.

THE COURT: Yes, I understand.

MR. LEVY: And now I ask for the copy of Mr. Reifsnyder's letter of February 17.

THE WITNESS: There is no such letter, Knight's letter.

MR. MARGIOTTI: It was not admitted, I don't think, your Honor.

Colloquy

MR. LEVY: The Government gives me a letter dated—

(T. 399):

a copy of a letter dated February 17, 1942, in re: Central Forging Company, Debtor, addressed to Harry Knight at Sunbury, Pa., taken from the file identified and offered in evidence as Government's Exhibit G-A, which is Mr. Reifsnyder's file.

THE COURT: All right, now, let the letter be marked D(K)-5 for identification.

(Exhibit D(K)-5 marked for identification.)

THE COURT: The witness may be excused until 2 o'clock. You may leave the court room.

MR. LEVY: If your Honor please, I would like to have the witness reminded not to talk to anybody.

THE COURT: Yes, the same instructions that I have given you heretofore apply, do not discuss the case with anyone.

The jurors may retire and you may be excused until 2 o'clock.

(The jury retired.)

THE COURT: Now, suppose counsel step up here for just a minute.

The Court is adjourned until 2 o'clock.

(Discussion at side bar between the Court and counsel not transcribed.)

Noon Recess

(T. 400):

Afternoon Session

THE COURT: Is Mr. Michael here?

ROBERT MICHAEL, resumes the stand.

(Discussion at side bar not transcribed.)

THE COURT: All right, Mr. Levy, you may proceed.

Cross Examination (continued)

BY MR. LEVY:

Q. Mr. Michael, just before we adjourned I received from the government a paper which was marked Defendant's exhibit number D(R)5. It came from the file of Mr. Reifsnyder that you had this morning testified was a joint file of yours and Mr. Reifsnyder's. It purports to be a copy of a letter of February 17, 1942, written to Mr. Harry S. Knight. I ask you to look at that letter.

(The letter was handed to the witness.)

Q. Did you ever read that letter before, Mr. Michael?

A. Probably not, but I would be reasonably familiar with its contents. The usual procedure on anything like that—

MR. PRATT: Just a minute.

THE COURT: Just a moment. Mr. Levy's question is whether or not you ever read this particular letter. Do you have any recollection of it?

THE WITNESS: I don't remember reading this particular letter, no.

Q. You do remember reading the letter of January 29?

A. Yes.

(T. 401):

Q. And although this was in your and Mr. Reifsnyder's joint file you don't remember reading this letter?

A. Well, let me read this thing over. (After examining) Well, I am familiar with the contents of the letter.

Q. Now that you have read the letter over you are familiar with the contents of it.

THE COURT: He said that before, he said he was familiar with the contents but didn't recall having seen the letter before.

Q. Did you discuss the contents with Mr. Reifsnyder?

A. Undoubtedly, yes.

Q. And did you discuss with Mr. Reifsnyder the fact that on the day, February 17, when the letter was written that there was a total—

MR. BROOKS: We object, your Honor; reading from the exhibit, it is not in evidence.

THE COURT: Yes, I must sustain the objection, Mr. Levy. You see again we approach it by indirection.

MR. LEVY: All right.

Q. Do you remember having discussed it with Mr. Reifsnyder before you wrote this letter—

A. (Interposing) I didn't write the letter—

Q. Before Mr. Reifsnyder wrote this letter, or before the date of February 17, do you recall discussing with Mr. Reifsnyder the fact that in this reorganization plan that

(T. 402):

as of December 31, 1941, there due wages and taxes and other bills of a total of a little more than $24,000 to which the accounts receivable of $23,534 were to be applied, leaving a total of $656.23 that had to be made up?

A. That's not familiar to me, no.

Q. Do you see that that is in this letter?

MR. BROOKS: We object to that.

THE COURT: Notwithstanding that, you see, Mr. Levy, here is a man who says he is generally familiar with the contents, he cannot testify that he ever saw the letter; you don't give him a brief summary of some discussion and he says to you, "I am not familiar with it."

MR. LEVY: He has testified that he was familiar with the contents of this letter prior to my showing him this letter.

THE COURT: But, Mr. Levy, let's you and I not go into any dispute about it. I told you at side bar that I would let you, at the proper stage of these proceedings, properly prove the letter, mark it in evidence if it is relevant, but I cannot permit you to pursue by indirection a course designed to bring out the contents of the letter. I am not foreclosing you from presenting your defenses but I want you to present it according to the rules of evidence as we

(T. 403):

understand them. If I am mistaken the Circuit Court of Appeals will have to correct me.

Q. Mr. Michael, you talked this morning about the Dobson statement, that is, the statement that is dated some

time in January or February which refers to the effective date as of December 31, 1941, that is the paper that the Government has already offered in evidence. Do you recall our talking about that this morning?

A. That's right, I remember the statement.

Q. And that statement showed that there was approximately $13,000 worth of books of accounts that were assigned and of $10,000 that were unassigned, did it not?

A. That's right.

Q. And the total of the accounts receivable, both assigned and unassigned were $23,534 and some odd cents?

A. That's right.

Q. And I also called to your attention that, among those accounts receivable was an account receivable of the Maxi Manufacturing Company for $3,086.27.

A. That's right.

Q. Now, you told us that you had a meeting at Mr. Knight's office on April 8th.

A. That's right.

Q. And at that meeting there was finally agreed, you said, between yourself, Mr. Knight and Mr. Reifsnyder the amount that was to be paid by the Maxi Manufacturing Company. That's correct, is it not?

A. That's right.

Q. And at that meeting it was agreed that $17,000 was

(T. 404):

to be paid to take care of the bondholders and the creditors and that there was to be $25,892 to be paid for cost of administration, etc.

A. That's right.

Q. In figuring that $25,892 you also told us that you also included therein $23,534 of accounts receivable, the account as of January 1st.

A. I told you that? I never told anybody that.

Q. Well, now, I am asking you whether, when you said it was agreed that they were to pay $25,892—

A. That's right.

Q. Whether or not that sum included in arriving at that figure, whether you included accounts receivable of $23,534, the amount of accounts receivable on June 1st, 1942.

A. No, I have testified that we didn't include the amount. Could I refresh my memory as to the amount of the total amount of the accounts receivable?

THE COURT: Will the Dobson report do it, Mr. Michael?

(Exhibit G-19 handed to the witness.)

A. Now, the amount is $25,892, is that correct?

Q. That's right.

A. If that is the amount of the accounts receivable, that's right.

Q. At $23,534.

A. $23,534.50, yes.

Q. All monies that were received by the Central Forging Company during your trusteeship were deposited at the bank.

(T. 405).

the Catawissa National Bank, in the name of the Central Forging Company, was it not?

A. That's right.

Q. And the checks were signed by you and countersigned by Mr. Crolly, the referee in bankruptcy?

A. On withdrawals, yes.

Q. What?

A. On any withdrawals.

Q. That's right.

A. Not on depositing, I never actually saw any of the checks that were deposited.

Q. No, I mean the checks that were withdrawn.

A. That's right. I said that.

Q. Withdrawing any money from that account.

A. I said that, that is what I said.

Q. Mr. Max Long and Mr. Homer Davis were paid by check, were they not, for operating this business?

A. They were.

Q. And they were operating this business under your trusteeship?

A. Yes.

Q. Some time in February, and before the plan, the revised plan of reorganization was filed in this case, in the reorganization proceedings, a plan was written up by Mr. Reifsnyder and submitted to Mr. Knight, was it not?

A. No, I think the first plan was the other way around. My recollection is that Mr. Knight submitted a plan to us and then we came back with somewhat of a counter-proposition. It is not too familiar, the details. It was mostly on a matter of detail and the plan, as originally consummated, is substantially the same (T. 406) plan as Mr. Knight suggested.

Q. I now take from the Government's exhibit G-8-A filed—

THE COURT: Wait a minute, now, G-8-A for identification.

MR. LEVY: No, I take from that file—that's right, it is for identification by the government.

THE COURT: For identification, yes.

Q. I take a letter from that file, which was the file that you and Mr. Reifsnyder had jointly and that letter I ask you whether you ever saw it?

MR. MARCIOTTI: Is that letter marked for identification?

MR. LEVY: No, I will have it marked in a moment.

A. Did you say this is a letter of Don Reifsnyder's?

Q. No, a letter which comes from Mr. Reifsnyder's file. It is Mr. Knight's letter to Mr. Reifsnyder, apparently.

A. That's right.

Q. And it is dated February 23, 1942.

A. That's right.

Q. I ask you whether you ever saw that letter.

A. Yes, I think I did.

MR. LEVY: Now I ask that that letter be marked in identification.

MR. BROOKS: Let the witness examine it further.

THE COURT: Just a minute, please. Let him look at it, let's not be hasty.

(T. 407):

MR. LEVY: I didn't attempt to foreclose him.

THE COURT: No, no, I understand, Mr. Levy, I know you didn't.

Q. What is your answer, please?

A. (After examining) Why, I am generally familiar with its contents, it was a letter that was written, came in here and I read it over at the time.

MR. LEVY: Now I ask that that be marked Defendant K-6.

THE COURT: For identification.

MR. LEVY: For identification.

THE COURT: Let it be so marked.

(Exhibit No. D (K) 6 marked for identification.)

Q. I call your particular attention—

MR. PRATT: If the court please, government counsel would like to see the letter.

MR. LEVY: Pardon me, sir. It came out of your files and I thought that you were very well acquainted with it.

THE COURT: Now, Mr. Levy, side remarks like that are not called for.

(Exhibit D(K)6 was handed to Mr. Pratt.)

THE COURT: All right, Mr. Levy, I guess the exhibit is yours.

Q. I call your attention to paragraphs number 1 and 2 (T. 408):
and ask you whether that refreshes your recollection as to who drew the first revised plan, Mr. Reifsnyder or Mr. Knight?

THE COURT: First revised plan or the first plan?

MR. LEVY: The first revised plan, the first copy of it.

A. You mean Mr. Compton's plan?

Q. No, I asked you just a moment ago whether Mr. Reifsnyder sent Mr. Knight a revised plan or whether Mr. Knight had drawn a draft of the revised plan.

MR. PRATT: I object.

A. You are speaking—

THE COURT: No, no, just a moment.

MR. PRATT: I object. I don't see the relevancy of this at all in this case.

THE COURT: At the moment I don't, either, except that Mr. Levy seems to be basing some defense on it and I will let the witness answer it if he can.

A. When you speak of the revised plan you are speaking of the first revised plan of Mr. Compton's plan, is that correct? Who proposed the first proposal? In other words, whether we did or Mr. Knight, is that what you are asking?

Q. No, that is not the question.

A. Well, would you mind repeating it?

Q. When your plan was finally drafted, and submitted to the court, you recall that plan, do you?

A. Yes.

(T. 409):

Q. Now, in formulating that plan did Mr. Reifsnyder draft the original of it or did Mr. Knight draft the original of it?

THE COURT: What do you mean, the plan that was ultimately filed with the court?

MR. LEVY: That's right.

THE COURT: Who actually drafted it?

MR. LEVY: Who actually drafted it.

THE COURT: Do you know that?

THE WITNESS: No, I don't know. I don't think it is possible to answer it. I think both Mr. Knight and Mr. Reifsnyder contributed in it as to its final drafting.

Q. I know that, but does that letter refresh your recollection that Mr. Reifsnyder sent Mr. Knight the plan and Mr. Knight corrected it?

A. Well—

MR. PRATT: I object.

THE COURT: I will let him answer it.

A. The history of the case of the whole plan was originally Mr. Compton—Mr. Compton drew up a plan—just a moment, let me give you a background and how my answering is going to be.

Q. No, no.

THE COURT: No, I will let him explain it. I am confused. I don't know what condition the jury is in. (T. 410):

but I will tell you right now I am confused.

A. The original plan, of course you have to go back to Mr. Walter Compton, the previous trustee, who had a plan and it was voted down. Now, when we started to work out on a plan we went down to see Mr. Knight, as I have testified, and out of that conference he sent through what you might consider to be a plan, and it is in evidence

here. Now, from that there were negotiations back and forth and this is only one letter of probably several, or at least it involves telephone calls as well as personal meetings. So when you come down to the final drafting or the final plan, just who could claim the authorship of it I wouldn't know. Now, this is simply a letter from Mr. Knight to Mr. Reifsnyder in which he is changing a plan which Mr. Knight, or Mr. Reifsnyder sent to Mr. Knight, but that plan is probably a plan that was sent originally by Mr. Knight to Mr. Reifsnyder and he changed it.

Q. I see.

THE COURT: In other words, the plan, whatever it was ultimately, was preceded by a series of negotiations?

THE WITNESS: That's right.

THE COURT: Between counsel?

THE WITNESS: That's right.

THE COURT: And these negotiations were carried on

(T. 411):

by letter, by phone, and by personal conference?

THE WITNESS: Right.

THE COURT: Is that right?

THE WITNESS: That's correct.

THE COURT: And as the result of that they arrived at some plan which was ultimately filed with the court?

THE WITNESS: Yes.

THE COURT: In which everybody had a hand, I suppose?

THE WITNESS: I would say so.

THE COURT: All right. Let's go on.

BY MR. LEVY:

Q. Do you recall, Mr. Michael, that Mr. Reifsnyder in the plan that he submitted to Mr. Knight set forth that the merger was to take place as of January 1st, 1942? Do you recall that?

A. I believe that is in there, yes.

Q. Will you show me where that is in the printed plan that was finally approved by this court—and I will give you the original, the one you signed.

A. You are asking me now if this plan sets forth the fact that the merger was to take place as of January 1st, 1942?

Q. Mr. Michael, I show you government's exhibit G-D, which is the proposal of the revised plan of reorganization which was signed by you and which has already been offered

(T. 412):

in evidence.

A. That's right.

Q. I ask you to point out to the court and jury where that merger was to take place as of January 1st, 1942.

A. Well, maybe I can't do it if it isn't in here.

Q. Well, will you look it over so you can tell us?

THE COURT: Is it in there, Mr. Michael, or not?

THE WITNESS: I don't know if it is set forth in here or not.

Q. Now, will you look it over so you can tell the court and jury whether it is or not.

MR. PRATT: Now, of course—

THE COURT: The document speaks for itself, Mr. Levy. We have gone over it and over it. Is it in there or not. You ought to know.

MR. LEVY: It is not, if your honor please, but in the original draft of that it was in and was stricken out by Mr. Knight. Now, I don't want to testify but that's what I am trying to get at if I must expose my hand.

THE COURT: Is it in this plan as filed?

MR. LEVY: It is not.

THE COURT: All right. Well, why ask the witness to read it to find out?

MR. LEVY: Because the witness has testified that the plan in this case was as of January 1st, 1942. (T. 413):

THE COURT: I don't know. I understood throughout, and I still understand, if I follow the testimony closely, that the figures in the Dobson report reflecting the condition of the business as of December 31, 1941, was the basis of the plan, whatever it was. Now, whether or not it is in the plan, I don't know that that is material at this stage unless it becomes material to your defense. It may well be, I don't know.

MR. LEVY: I will go to my next question now, if your honor please.

Q. The plan that has been offered in evidence here, which is Government's exhibit G-1-D was the plan that was submitted to the creditors and bondholders and upon which the vote was taken, is that correct?

A. Yes.

Q. And that was the plan that was confirmed by the court, is that correct?

A. That's correct.

Q. And that was the only plan that was ever submitted to the creditors that ever received their complete approval and that was ever confirmed by the court, is that correct?

MR. BROOKS: If he knows, if your honor please.

THE COURT: I will let him answer it.

MR. LEVY: The question is if he knows.

A. As far as I know, yes.

Q. In other words, there were no other plans approved by the court?

A. No, sir, not in this proceeding.

(T. 414):

Q. Now, Mr. Michael, you told us that every dollar that was received by the Central Forging Company was put into the bank and was drawn out by check signed by you and counter-signed by Mr. Crolly?

A. That is true.

Q. That was the procedure in your trusteeship?

A. Yes.

Q. Well, does that apply to the $3000 check payable to Mr. Fermer?

THE WITNESS: No, that was not a Central Forging check, that was a Maxi-check.

THE COURT: That didn't go into the account, as I understand it?

THE WITNESS: No.

THE COURT: That was cashed?

THE WITNESS: That's right.

THE COURT: All the other checks went through the account in the usual course of business, all other checks were received by you as trustee, is that right?

THE WITNESS: Yes, speaking of it as a business; all the business checks down there would come into the accounting office and were deposited in the usual manner.

Q. Now, Mr. Michael, you took a course in accounting, didn't you?

A. I don't ever remember it, Mr. Levy.

Q. Well, did you or didn't you?

A. No, I did not.

Q. Now let's not try to be funny about it.

(T. 415):

THE COURT: He is not trying to be funny about it, he says he doesn't remember it; you said to him, "You took a course in accounting," a positive statement.

Q. Did you have to do with the books of any of the companies with which you were associated? That is, did you keep any of the books of any of the companies which you were associated with?

A. No, I never kept books. I tried to keep myself familiar with bookkeeping customs and so on so that I could determine whether they were being kept properly or not.

Q. You also told us that you received from the Dobson accounting services monthly reports.

A. Yes, I did.

Robert MacRae—Cross

Q. Now, prior to the meeting of April 8th, 1942, a meeting at which you said Mr. Knight and your and Mr. Reifsnyder finally decided on the figures that were to be paid

A. That's right.

Q. You remember that that meeting?

A. I do.

Q. Now, prior to that meeting of April 8th, 1942, I ask you whether the $23,534 was of accounts receivable was not paid in every dollar and every cent into your account as trustee and you paid out every dollar of that money in the operation of this business.

MR. PRATT: I object, if your honor please.

THE COURT: Let me hear the question, Mr. Barrows.

(Reporter read the last question.)

THE COURT: I don't understand that myself. Are (T. 416): you talking now about this final closing money? That wasn't paid, as I understand it, until April 24th. You fixed the date as April 8th.

MR. LEVY: I will withdraw the question and repeat it, Judge, so that there will be no misunderstanding of it if the court hasn't got the import, I want the court to get the import of it.

Q. On April 8th, 1942, the date when you said there was a meeting at Mr. Knight's office at which you fixed the amount that was to be paid by the Maxi Company, on that date, whether or not every dollar and every penny of the accounts receivable of December 31, 1941, namely

the $23,534 wasn't paid into the Central Forging Company deposited in your account and drawn out by you by check to pay the costs of your administration prior to April 8th, 1922?

MR. PRATT: To that I again object.

THE COURT: No, I will let him answer that.

A. No, that's not correct.

Q. Will you tell us where it is incorrect?

A. Well, the amount paid—of course your question says wasn't it all paid to the trustee. Now, there again I don't know how you want me to answer it. Of course the amount paid by Maxi on that day was broken up into several different checks.

THE COURT: Well, that is April 24th, he is talking about April 8th.

(T. 417):

THE WITNESS: Oh, we received no money on April 8th at all, if that's what you mean. The amount was agreed on April 8th.

Q Mr. Michael, I don't think you have got my question.

A: Well, apparently I haven't.

THE COURT: He is not alone.

MR. BROOKS: If your honor please, the objection was to the form of the question. There are about three questions in one.

THE COURT: No, I had something else in mind and I couldn't see why Mr. Levy wanted the answer to it, but Mr. Michael had something else again in

mind. So when I say he is not alone I mean I am at least the other one.

Q. Mr. Michael, you told us that on April 8th when you met at Mr. Knight's office, you and Mr. Reifsnyder and Mr. Knight—

A. That's right.

Q. —that you had Dobson's account with you.

A. Yes.

Q. You also told us that in arriving at the figure that was to be paid by the Maxi Company you arrived at the figure of $17,000, which was to pay the bondholders and the unsecured creditors, is that correct?

A. That's right.

Q. And that you arrived at the figure of $25,892.

MR. PRATT: Pardon the correction, isn't that $982.83?

(T. 418):

A. What is it, $25—

Q. 892.

MR. PRATT: 83.

A. 892?

MR. PRATT: No.

A. $25,000—

MR. PRATT: 982.83.

A. That's right, that was the amount.

Q. That was to be paid for the costs of administration?

A. That's right.

Q. And in arriving at that figure you took the Dobson statement which you had before you?

A. That's right.

Q. Which was effective as of December 31, 1941?

A. That's right.

Q. In arriving at that figure you took the accounts receivable in that Dobson statement, of $23,535?

A. That's right.

Q. Now I ask you whether on April 8th and between December 31st, 1941 and April 8th, 1942, whether every dollar of that $23,535 of accounts receivable was not paid to you as trustee and expended by you for the administration for this estate.

MR. PRATT: To that I object.

A. Well, that—

THE COURT: Just a moment. I will let him answer it.

(T. 419):

A. That is just a technical question.

Q. Well, will you answer it yes or no, and then you can explain.

THE COURT: If he can answer it yes or no.

A. I don't think I can answer the question either yes or no. I wouldn't know. I would have to go over the books to see. What you are asking me now, in effect, is the accounts owed us on January 1st, 1941, or December 31st, 1941, the accounts owed Central Forging Company, whether they had paid all of their accounts by April 8th, or not, is that right?

Q. The accounts receivable, yes.

A. Well, I couldn't answer that. I imagine the majority of them had been paid but in their place were other

accounts, we were doing business and they would pay into and accumulate another so I can't answer that. I would hate to have an account receivable as of April 8th and have to go over it item by item and check off and I would dare say that the majority of the $23,000 had been paid in and in its place was another set of accounts receivable.

Q. I am asking you now whether it wasn't all paid in $23,534, wasn't all paid in to the Central Forging Company and by you as trustee expended prior to April 8th.

THE COURT: And that he says he can't answer without looking at the books, and I shouldn't wonder. This business, as I understand it, throughout its operation,

(T. 420):

was conducted as a going business. Is that right, Mr. Michael.

THE WITNESS: That's right, it was daily operation.

THE COURT: And when you negotiated for a merger or consolidation or plan of reorganization—I use all three because I don't know what Mr. Levy prefers to call it—but whatever it was, you adopted the figures as of December 31, 1941?

A. Yes, because the business—we had to set upon some date, it would fluctuate every day. I mean, the accounts receivable are never stable, they are either going up or going down the same as all accounts in any business.

THE COURT: All right, go on, Mr. Levy.

Q. Didn't the Dobson report of April 1st show you that all of the accounts of December 31, 1941, were paid by March 31, 1942?

MR. PRATT: That I object to, that account is not here.

T-421

MR. LEVY: The witness can answer, he said he saw that Dobson account.

A. I wouldn't have the Dobson report by March 8th. Mr. Dobson was very slow as this one will indicate. The letter in the front indicates that it was 28 days after the first of the year before he even sent it out.

Q. That is a yearly report, not a monthly report.

A. Well, it is the same thing.

Q. By the way, wouldn't the report of March 1st show that all those accounts were paid in January and February?

A. I don't know what they would show, I would have to have the report here and check it. I don't have that kind of a memory.

Q. You told us, however, that it was the item of $23,534, the accounts receivable of January 1, 1942, in which the reduction was made so that you could steal $3,000, isn't that correct?

A. Well not exactly, no.

Q. You didn't say that to this Court?

A. I said that was the figure that it was taken from.

Q. That was the figure it was taken from. And if that figure wasn't there you couldn't have stolen it, could you, Mr. Michael?

A. That is nothing but a bookkeeping figure, as far as that goes.

Q. You don't want to exonerate yourself, apparently, as a theft, do you, Mr. Michael?

(T. 422)

THE COURT: The objection is sustained. Mr. Levy, this defendant, so far as I know, has never pled guilty to the theft count in this indictment.

MR. LEVY: Oh, this very indictment.

THE COURT: Wait a minute. He has pled guilty to one count in this indictment. Now, whether or not he wants to exonerate himself isn't important here, he is not on trial at the moment, he has pled guilty to an offense. Now, your question was improper.

MR. LEVY: If your Honor please—.

THE COURT: I said the question was improper, Mr. Levy, I don't care to hear you further. The question, I think, was improper.

MR. LEVY: Can I have the two indictments, the last one and this one? Do you have them?

MR. PRATT: The clerk has them.

MR. LEVY (Addressing the clerk): Do you have the two indictments here?

Q. Mr. Michael, you testified this morning to a former indictment to which you pleaded guilty.

A. That is correct.

Q. Did that indictment charge you with embezzlement?

A. Well, you are not asking the question properly. I didn't plead guilty to all four counts of an indictment. Now, what is your question?

Q. My question is, on the first indictment did that (T. 423):
charge you with embezzlement?

THE COURT: No, no. The objection is sustained. The only issue which can possibly affect his credit is the crime to which he has entered a plea of guilty. As far as the other charges of that indictment are concerned, Mr. Michael stands the same as your clients, not guilty.

MR. LEVY: If your Honor please, I am only cross examining him on something that the Government brought out this morning.

THE COURT: You are asking him whether or not the indictment didn't charge it, and I am saying to you the only testimony that can affect his credit in these proceedings is testimony, or other evidence of his prior convictions, not charges; on those counts of an indictment which still stand open of record in this court and to which his plea of not guilty has been entered he stands like any other defendant in this case, not guilty.

Q. You pleaded guilty generally, as shown by this indictment that is now on trial, did you not?

A. I believe I did, yes.

Q. In other words, you pleaded guilty to the first count which charges you with embezzlement?

A. Well, to be perfectly frank, I never read the indictment over.

Q. Mr. Michael, you told us the other day that you left Mr. Knight's office about 6 o'clock and that you went across

(T. 424):

the street to the Edison Hotel with Mr. Reifsnyder and you had dinner. After the dinner you said, "I had left the

car around the corner, I remember it was my car and there was something wrong with it, I don't remember whether it was a flat tire, but I know we parked it there, and we discussed what we had accomplished that day and also as to the method of paying this $3,000 over to us."

A. That's right.

Q. And the question was asked: "Q. What $3,000 are you referring to?" And you answered, "A. Well, we had a conversation during the afternoon in which it was agreed that the—

Q. Was with whom?"

And you answered, "With Mr. Knight and Mr. Reifsnyder it was agreed that $3,000 would be made payable to a third party and that money was to come back to us less certain deductions for income tax purposes."

That is correct, is it?

A. That's correct. What date did you put on there?

Q. Well, that was the question that was asked you last Friday in this case.

A. I thought I understood you to say a day in February, I mean that is important. You didn't put any date on your question?

Q. No, I did not.

A. That is correct.

Q. Now I ask you, Mr. Michael, you were sworn before the Grand Jury, were you not?

A. Yes.

(T. 425):

Q. You took a similar oath to the oath you took here before your Maker, did you not?

A. That is correct.

Robert Michael Cross

Q. And I ask you whether this question was asked and whether you made this answer—

THE COURT: When and where? Before the Grand Jury?

MR. LEVY: Before the Grand Judy.

Q. "Now, did you ever have a conversation with Mr. Knight about an increase in fees in excess of the money that was to be allowed you by the Court?"

And you answered: "No."

And then the question was asked: "Did Mr. Reifsnyder ever discuss it in your presence?"

And you answered: "Not to my knowledge, no."

Then the question was asked: "All right. Now, you deny that you discussed or were present when a proposal was made to Mr. Knight that he deduct or that you deduct as trustee of the Central Forging Company $3,000 of the accounts receivable to be reported in the return, for which the Maxi Manufacturing Company was to give you and Mr. Reifsnyder a fee, or a sum of $3,000?

Is that the end of the question?

Q. Yes.

I deny that absolutely."

Were those questions asked you and did you make that answer before the Grand Jury?

A. When?

(T. 426):

Q. Before the Grand Jury.

A. Before the Grand Jury when?

THE COURT: What date, Mr. Levy?

Robert Michael Cross

A. I have already testified that I told two stories before the Grand Jury.

Q. On August 3, 1944, the Grand Jury that was investigating this very crime.

A. Now your question is did I testify that way before the Grand Jury?

Q. Were those questions asked you and did you make those answers?

A. I presume I did. If you are reading from the minutes, or the record of the Grand Jury at that time, I did tell that story.

Q. Now I ask you—you had told us—on Friday, the question was asked, "How did you go to the place of meeting on that day, April 24, 1942?"

And you answered, "I drove my car and picked up Donald Reifsnyder in Scranton and I picked up George Fenner in Wilkes-Barre." This is in relation to April 24, 1942.

And then the question was asked you, "And during that trip of April 24, 1942 when Mr. Fenner was in the car, did you have any talk with him in regard to the manner in which the final payments were to be made?"

And you answered, "Yes, when I met Mr. Reifsnyder in Scranton and on the way to Wilkes-Barre he told me that he, that George Fenner had agreed to act as the intermediary in

(T. 427):

the receiving of the $3,000 and that we would have to talk with Mr. Fenner to set a figure as to what he would want to retain of it for his income tax. When he got in the car and shortly thereafter, some time during the trip, at least, the subject came up and it was discussed.

"Q. What was the subject of the conversation?

"A. Well, the substance of it was how much he felt he should have for the payment of the tax on $3,000 additional income which he was supposed to receive and declare as part of his income. That was finally settled at the figure of $500."

Those questions were asked you and you made those answers on Friday, is that correct?

A. I think so. As far as I can follow you, that was correct.

Q. Now, then, in the Grand Jury meeting, the same Grand Jury meeting in August that I referred to—

MR. PRATT: August of what year?

MR. LEVY: Of 1944.

Q. And in the very investigation here involved, I ask you whether these questions were asked and did you make these answers:

"Do you recall whether on the date the settlement was made, the date that you received your check from the Maxi Manufacturing Company for your fee, Mr. Reifsnyder's fee in connection with your duties as trustee of the Central Forging

(T. 428)

Company, that you picked Mr. Fenner up and drove with him to Sunbury?

"A. Do I deny that question?

"Q. Do you recall?

"A. Well, as I said, I am not positive. I would be inclined to believe that this is true but I am not absolutely certain. I remember we picked up Mr. Fenner on one

occasion. As I remember, only once, and drove him down, but I can't remember on what occasion or why.

"Q. Do you deny that you discussed with Mr. Fenner the fact that he was to receive $3,000 from the Maxi Manufacturing Company as fees for legal services, and that he in turn was to turn over to you and Mr. Reifsnyder $2,500 and keep $500 for the payment of income taxes on that?

"A. I never discussed with Mr. Fenner anything about $3,000.

"Q. Do you deny that you were present when such a discussion took place with Mr. Fenner?

"A. If it did, I didn't hear it, and if it was in my immediate presence, I am certain I would have heard it.

"Q. Do you deny that such a conversation took place in the automobile in which you were riding from Wilkes-Barre to Sunbury?

"A. I do, yes."

Were those questions asked and did you make those answers?

(T. 429):

A. Yes.

Q. And you were under identically the same kind of an oath that you are under now?

A. Yes, but then I was trying to protect your client, you see, as well as myself.

Q. Now you are trying to protect yourself?

A. No, no, I am not trying to protect anybody.

THE COURT: No, no, he didn't say that. Now, Mr. Levy, just a moment. There was no reason for misunderstanding his answer. You are standing just as close to this witness as I am sitting at the moment.

and your repetition of the answer was not his answer. Now, I want the reporter to read the witness's answer.

MR. LEVY: I didn't intend that there be a repetition, I asked him.

THE COURT: Well, it so appeared and it so sounded to me. Now, I want the reporter to read the answer.

(The reporter read as directed.)

Q. And, now you are trying to protect yourself? I desire an answer to that question.

THE COURT: The objection is sustained. The man has already entered a plea of guilty, I don't know what protection there is. If you want to ask him any other question along that line, properly framed, I will permit it. But the conclusion of protection is another matter.

(Which exception is hereby allowed and sealed (T. 430):

accordingly.)

(Sealed) U. S. D. J.)

Q. Now, then, I asked you last Friday whether you were not asked this question:

"Q. Now, the next of these checks is Exhibit G-3-B, a check of the same date and of the succeeding number, payable to George L. Fenner in the sum of $3,000. What is that check, what does that represent?

"A That is the check made payable to George Fenner which was to be cashed by him and the proceeds, less $500, turned over to Mr. Reifsnyder and myself."

You made that answer last Friday, did you not?

A. I think that's right.

Q. Now, in that Grand Jury meeting that I referred to a moment ago you were asked this question:

"Q. You know from what was said that Mr. Fenner got a check of $3,000 in your presence.

"No, you told me he got a check of $3,000 in Hon. Knight's office on the day of April 24th but you did not say that he got it in my presence.

"Q. Substantially that.

"A. He might have got it in my presence, but not to my knowledge."

Did you answer those questions in that way?

A. I could have.

(T. 431):

THE COURT: We will take a 10 minute recess. The witness may step down.

The jurors may retire.

(The jury retired.)

(Discussion off the record at side bar.)

(Short recess was taken.)

THE COURT: All right, Mr. Levy.

Cross Examination (Continued)

BY MR. LEVY:

Q. There is only one other question I want to ask Mr. Michael. Did you see a Dobson audit dated March 20, some time in March, 1942?

A. No, I don't think there was any such report. I think all of the reports that I ever was familiar with were dated as of the 1st of the month.

MR. LEVY: I wonder whether the Government has the Dobson report?

MR. BROOKS: Mr. Levy, do you know whether or not there is such a report?

MR. LEVY: I saw such a report and it may be that—

THE COURT: If the Government showed you it—

MR. PRATT: No, we haven't got that.

THE COURT: Maybe you can find it. You don't have it?

MR. PRATT: No, we do not have it, your Honor.

THE COURT: You might be able to contact Mr. Dobson, surely he ought to have an office copy and maybe

T-432)

a phone call would produce it.

MR. LEVY: That's all.

MR. COUGHLIN: No question on behalf of Mr. Homer Davis, may it please the Court, at this time.

THE COURT: Am I to assume, Mr. Robinson, there are no questions on behalf of Mr. Fenner?

MR. ROBINSON: Yes, I have some questions on behalf of Mr. Fenner. I think I have the paper that Mr. Levy asked for.

MR. LEVY: Will you mark this Defendant's Exhibit No. D(K)-7 for identification?

(Exhibit D(K)-7 was marked for identification.)

THE COURT: Is this Mr. Fenner's or Mr. Knight's?

MR. ROBINSON: I am only looking at Levy.

THE COURT: Tardiocino, it is Mr. Robinson's DEK-7.

BY MR. LEVY:

Q. I don't know whether you ever saw this before, did you, Mr. Michael, giving you Defendant's Exhibit No. DK-7?

THE COURT: What is the document, Mr. Levy?

MR. LEVY: It is the Dobson Accounting Service report on the merger of the Maxi Company.

THE COURT: After the closing?

MR. LEVY: No, March 20, 1942.

THE COURT: March 20, 1942?

MR. LEVY: Yes.

THE COURT: Is that the report that we were looking for a moment ago?

MR. LEVY: Yes.

THE COURT: Oh, pardon me. All right.

A. What was your question a minute ago? You asked me with regard to the report on the Central Foundry Company, didn't you?

Q. That's right.

A. This is a report of the Maxi Manufacturing Company.

Q. That's right. Now I ask you whether you ever saw it again?

A. No.

MR. LEVY: That's all.

Cross Examination

BY MR. ROBINSON:

Q. Mr. Michael, I believe you testified on your direct examination on Friday that you made a trip to the Central Forging Company shortly after you talked to Judge John about the appointment, is that right?

A. That's correct.

Q. And was that before the 1st of January or not?

A. I made one trip before the 1st of January, yes.

Q. And then after your appointment you went to the Central Forging Company again, did you?

A. I went as I have testified, it surely wasn't the 1st. It was either the 2nd or 3rd.

Q. The first business or legal day after the New Year?

A. First of the year.

Q. Can you tell us when was the first time you saw George Conger?

A. It's very difficult for me to say. As a matter of fact, I just simply can't say. I have tried to figure out when I did first meet him and it seems to me, though, that I met him on that day and yet, on the other hand when I think over, a little more, that it was later, so I don't know.

Q. You don't know, that is the answer to the question is that right?

A. That is very much so.

Q. Then you went down every Friday to the Canton Forging Company up until the time that the plant was closed on April the 24th?

A. Well, I would say that we missed very few.

Q. Practically every Friday.

A. And of course I was there other days than Friday.

Q. Now, during that time did you see Mr. Fenner at all?

A. Yes, I met him once or twice.

Q. So from the time you were appointed until April the 24th, when you called for him at his home, would you say you only met him once or twice during that time?

A. Well, I wouldn't restrict it to twice, I would say about three times, one time we had quite a talk with him, it was the occasion of a dinner down there, and my recollection is that is the first time I ever really got talking to the man.

(T. 435):

Q. At dinner?

A. Well, preceding and after dinner. I didn't sit with him.

Q. And did you discuss the matter of the reorganization with him?

A. Oh, yes.

Q. Did you go into the figures and the details with him?

A. Why, not at great length, I guess. We talked generally. It was more of a social evening at the time, to my recollection.

Q. And did you at that time give him any information that you had been appointed in the manner that you described here on the witness stand?

MR. FRATE: I object to that. Ugly as sin, as to definity.

THE COURT: Well, counsel, permit me to reframe your question in this way: Did you at any time discuss with Mr. Fenner the manner of your appointment?

THE WITNESS: No.

Q. So that all during this time he had no idea, from what you told him or from what you know others told him that you had talked to Donald Johnson who told you to see his father and that you had then gone to see Mr. Reifsnyder who told you he had expected you and there was not anything to indicate to him that Mr. Johnson was connected with this case, is that right?

A. No.

Q. Now, during the time that you talked with Mr. Knight (T. 436) at Mr. Knight's office, or any other place, was Mr. Fenner present?

A. The question was Mr. Fenner with Mr. Knight and myself and Mr. Reifsnyder at any time?

Q. Yes, that you can fix.

A. I don't remember that he ever was other than the day of the 24th.

Q. Prior to the 24th of April?

A. Of April.

Q. He had no knowledge, then, from what you told

him what was going on in Mr. Knight's office regarding the negotiations?

THE COURT: Well, now, just a moment. You say he had no knowledge.

MR. ROBINSON: From what the witness told him.

THE COURT: At least the witness told him nothing, apparently.

MR. ROBINSON: That's right. I am confining it to what he told the witness.

THE COURT: All right. I mean, if you so confine it it is all right; it would be a difficulty for the witness to say whether or not Mr. Fenner had knowledge from other sources.

Q. He had no knowledge from what you told him of the connection between you and Mr. Reitsnyder and Mr. Johnson?

A. No.

Q. Now, on February the 13th you had a meeting with Mr. Knight in Mr. Knight's office in Sunbury, and after that you

(T. 437):

said you went to Harrisburg.

A. Yes.

Q. Were you consulted with the bankrupt

A. Bondholders' Committee.

Q. Bondholders' Committee, and then you left for Scranton something after 12 o'clock? That is correct, isn't it?

A. That's right.

Q. And on that occasion you say that Mr. Reitsnyder first brought up the subject of splitting fees. Is that so?

A. No, I didn't say splitting fees, I said of taking care of.

Q. Taking care of Mr. Johnson. And you, as I remember, said, "What do you mean, splitting fees?" Isn't that so?

A. That's right.

Q. And as a result of that, Mr. Reitsnyder outlined a plan to take care of Mr. Johnson, you said, by some method of reducing assets. Did you ever tell Mr. Fenner anything about that conversation?

A. No. The first recollection that I ever had discussing with Mr. Fenner the proposition of the $3,000 was after he was in my car and we were on the way to Sunbury on the afternoon, or the morning, rather, of the 24th of April.

Q. So am I to understand, then, Mr. Michael, that you now state to this jury and to the Court that so far as you know the first knowledge you had that Mr. Fenner knew of this was on the day that it actually happened, on the 24th?

A. To the best of my recollection, that is the truth. (T. 438-9)

Q. And of course after you had concluded the deal in Mr. Knight's office and went to the Catawissa Bank, and up to the golf course and came home.

A. That's right.

Q. You and Mr. Reitsnyder waited until Fenner got out of the car before you discussed the manner in which these fees were to be split, is that so?

A. Yes, that's true, I am sure it is.

Q. You had no discussion at all in the presence of Mr. Fenner?

A. I believe that's true. I don't believe that we ever discussed it in his presence.

Q. Did you convey to Mr. Fenner any information concerning the interview that you referred Mr. Reifsnyder had with Mr. Knight at his home on April the 8th?

A. No, I didn't.

Q. You didn't?

A. I didn't.

Q. And so far as you know, did anybody?

A. Well, the only thing that I could say on that would be hearsay from Donald Reifsnyder.

Q. I see.

A. Because that morning when we went down he informed me on the way down that Mr. Fenner was to act as the third party, or intermediary. Now, I don't remember asking him where he obtained that information, but he gave it to me and I found it to be true.

Q. Did Mr. Reifsnyder tell you that he had talked to Mr. Fenner about being an intermediary?

A. Well, that's a little bit hazy, I couldn't say that he had actually spoken

(T. 439):

words to Mr. Fenner, but he had arranged for Mr. Fenner to go down.

Q. I see. And did he tell you whether or not he had any difficulty in convincing Mr. Fenner that he should go along with the proposition?

A. Well, now, of course you are assuming—

Q. I am asking you whether or not he stated that.

A. In the first place, I don't even remember that he

told me that he had discussed it with Fenner, therefore he wouldn't say that he had any difficulty either way.

Q. Your statement to the jury on direct examination was that Mr. Reifsnyder told you that Fenner had agreed to be the third party?

A. That's right.

Q. And did he say any more than that?

A. That is as much as I can clearly remember. The import of his statement to me was that Fenner had agreed to act as the intermediary.

Q. Did it occur to you at any time that you ought to warn Mr. Fenner about the difficulty he might get in by being an intermediary?

A. No, it didn't—

Q. You did not. Did you know anything about the man at all?

A. Very little.

Q. Did you know that he was a church man in Wilkes-Barre, in the City of Wilkes-Barre?

A. I didn't.

Q. Or connected with the YMCA and YWCA?

THE COURT: Well, now, just a moment, Mr. Robinson.

(T. 440):

I will sit here quietly and allow you the widest latitude but I don't think those things are exactly called for.

MR. ROBINSON: If he didn't know, he could say that he didn't know.

THE COURT: I know, I know what he can do and what he can't do, but I am asking you not to do anything about such things.

MR. ROBINSON: All right, your Honor.

Q. But you did know that he was an attorney and had practiced for 42 years in the City of Wilkes-Barre?

A. I knew he was an attorney, and from looking at him I could say that he might have practiced forty-two years. I don't remember him ever informing me about it.

Q. And you knew that this evil business he was about to get into might cause him to lose his license?

THE COURT: Oh, no, Mr. Robinson, please, please, please. Stay within the reasonable bounds. Here is a man who prior to this trusteeship was the manager of a country club.

MR. ROBINSON: That's all right.

THE COURT: How does he know what reaction the courts of Pennsylvania might be to Mr. Fenner's conduct, assuming it was evil?

MR. ROBINSON: I am just asking him whether he

(T. 441):

felt any impulse to warn Mr. Fenner of the truth.

MR. BROOKS: We object to it.

THE COURT: Mr. Fenner was a man, you say, with 42 years experience in the practice of law.

MR. ROBINSON: That's right, your Honor.

THE COURT: And you think this manager of the country club might be advising him of his own dereliction of duty as a member of the Bar, or some such thing?

MR. ROBINSON: No, not at all, but it seems to me that it might be a fact that he could well take into consideration and give Mr. Fenner some more information which he might be guided upon in his acts.

THE COURT: The objection is sustained. I think you are going slightly out of bounds, as it were. There is no reprimand intended, but let's bring it back within reasonable confines.

Q. After George Fenner got out of your car at 6:30, between 6:30 and 7 o'clock on April 24, 1942, when was the first time that you saw him after that?

A. Well, I think it was in this building at a probably the very first time I saw him was out in the corridor.

Q. And when?

A. Well, that would be about a year ago September the 29th, we'll say, last year; about then.

MR. ROBINSON: That's all the questions I have, your Honor.

(T. 442):

THE COURT: It looks like you're next, Mr. Margiotti.

MR. MARGIOTTI: Yes, your Honor. If your Honor please, I have a few motions I want to present and rather than to start with this examination, since he has been on the stand all day, at this time I would like—

THE COURT: In other words, you would like to go home now, you would like to start in the morning?

MR. MARGIOTTI: Yes, to give him a rest.

THE COURT: To give him a rest, oh, yes. You know the old adage, "Beware of the Greeks bearing gifts." All right, the witness may leave the court room, and any member of your family who is here may leave with you.

The jurors may retire and return tomorrow morning at the usual time.

(The jury retired.)

(Adjournment taken to Tuesday, October 23, 1945, at 10 a. m.)

(T. 443):

Scranton, Pa., Tuesday, October 23, 1945, 10:00 a. m.

Appearances: (Same as previously noted.)

THE COURT: All right, let the jurors come in. Mr. Michael, resume the stand, please.

ROBERT MICHAEL, resumed the stand.

Cross Examination (continued)

BY MR. MARGIOTTI:

Q. Mr. Michael, this cross examination may be a little lengthy and my questions may be a little lengthy, too; as I go along if you don't understand me have me repeat my questions, I want you to fully understand them before you answer them.

The Court has advised you from time to time since you have taken the witness stand not to discuss this case with anybody on either side; I assume you have followed the Court's warning.

A. I have.

Q. Have you read since you took the witness stand the testimony which you gave before the Grand Jury subsequent to the entrance of the plea of guilty in the indictment in this case?

A. No, I have not.

Q. Have you discussed that with anyone?

A. Since I took the witness stand?

Q. Yes.

A. No, I have not.

(T. 444):

Q. I see. All right. Mr. Michael—is your name Michaels or Michael?

A. Michael. There is no S.

Q. There is no S to it. All right. Mr. Michael, as I understand your testimony in chief, you and Donald Johnson were on friendly terms prior to your appearance on the witness stand?

A. That's right.

Q. And I assume you are still on friendly terms? You are still his friend?

A. Well, I would assume. As far as I am concerned, yes.

Q. Well, are you or aren't you?

A. Yes, I am.

Q. All right. And you and Don Reifsnyder were friends, weren't you?

A. That's right.

Q. And had been friends for a long time?

A. Yes.

Q. You knew him intimately, did you not?

A. You mean Mr. Reifsnyder?

Q. That's right.

A. Well, of course intimately is a comparative term.

Q. Well, you knew him as well as you knew Donald Johnson?

A. No, I wouldn't say so.

Q. Well, about the same.

A. Well, there is a distinction there; I knew Don Reifsnyder to speak with him, I played golf with him.

Q. That is what I had in mind.

A. That's right.

Q. You played golf many times with Donald Reifsnyder, is that right?

A. Yes, several times.

(T. 445):

Q. Several times. In fact you and Donald Johnson and Donald Reifsnyder all belonged, the three of you belonged to the country club?

A. No, I didn't belong to the club, I was the manager of the club.

Q. Well, at least you were there, you were the manager of a club to which they, among many hundreds of others, belonged?

A. That's correct.

Q. And that's how you became acquainted with them, is it, or did you know them before you became manager of the country club?

A. That is substantially true, yes.

Q. I see. There is a telephone at the country club, isn't there?

A. That's right.

Q. No. 371?

A. I think it is still that number, yes.

Q. Is that a single line or is it a pay station or is it a telephone exchange?

A. There is a single trunk line coming into the club. I am speaking now, of course, during my time, I can't speak for what is up there now. There is a single line coming in and it enters a switchboard and from that switchboard are, or was, six extensions, I believe.

Q. Six extensions. In other words, in speaking to you, when you get a call into the club, for instance someone wanted you at the phone, your operator would answer the call first?

A. Yes.

Q. And then she would locate you at the most convenient spot?

A. That's correct.

(T. 446):

Q. And get you on the line that way?

A. Yes.

Q. Did you have a phone at your own home?

A. I had a phone in my apartment, yes, an extension. That was one of the extensions of which I speak.

Q. You lived right at the club?

A. I did.

Q. Did Donald Reifsnyder have a phone in his home?

A. In his office.

Q. Office and home?

A. Yes.

Q. Had you had any business transactions with Donald Reifsnyder before he was appointed your counsel?

A. No.

Q. By the way, as trustee appointed by the Court, did you appreciate that you were an arm of the Court in order to carry out the functions of your appointment?

A. Well, I would say generally, yes. I became informed of that more or less afterwards.

Q. Yes. You were the representative of the Court in the matter that is under discussion in this case?

A. That's right.

Q. And you had had experience before as a trustee?

A. That's right.

Q. What case was that?

A. That was the Edington Distilling Company.

Q. And who appointed you in that case?

A. Judge Johnson.

Q. I see. And that was—were you acting as trustee for the Edington Distilling Company when you were appointed in

(T. 447):

this particular case?

A. Yes.

Q. So that you had the two jobs on at the same time?

A. That's right.

Q. Are they the only two cases in which you were appointed trustee or to any other office by Judge Johnson?

A. Yes.

Q. I assume Judge Johnson appointed you in the Edington case, too, did he?

A. I so stated.

Q. I beg your pardon. Now, who was your attorney in the Edington case?

A. Daniel H. Jenkins.

Q. Daniel H. Jenkins?

A. That's right.

Q. And who is your attorney now?

A. To what are you referring?

Q. Well, do you have an attorney?

A. At the moment I would say that I didn't have an attorney.

Q. At this moment?

A. Yes.

Q. Well, who was the last lawyer you had?

A. You mean in a trusteeship or as a private attorney?

Q. Either way.

A. Well, I had three attorneys.

Q. Well, who were they?

A. There was Daniel Jenkins, Stanley Coar and Robert MacCracken.

Q. Was that in the Edington case?

THE COURT: No, no, he is talking outside of those two cases.

MR. MARGIOTTI: I beg your pardon, Judge.

Q. Well, in the Edington case you had one lawyer? (T. 448):

A. That's right.

Q. Now, then, you had three lawyers previously, you mean?

A. That's correct.

Q. I see. And who was your last lawyer?

THE COURT: All three of them, I understand. Is that right? Let's clear this up.

THE WITNESS: What's that?

THE COURT: All three of these men represented you in the same proceeding?

THE WITNESS: Yes, that's right.

THE COURT: And Mr. MacCracken is the man who argued your case before the Supreme Court several weeks ago?

THE WITNESS: That's right. And I was accompanied by Daniel Jenkins and Stanley Coar.

Q. All right. Now, then, were you accompanied by Daniel Jenkins in any interview with Reifsnyder after the investigation began in this case?

A. Why, I don't remember offhand.

Q. Didn't you and Daniel Jenkins, when this investigation began, go to see Don Reifsnyder? You ought to remember that.

THE COURT: Just a moment.

Q. (Continuing): If you did.

THE COURT: Go ahead.

A. Yes, I think we did.

Q. Well, now, you think so, do you know?

A. I remember

(T. 449):

we did.

Q. Where did you go and see Don Reifsnyder?

A. We went to New York.

Q. When did you go to New York?

A. Well, I couldn't remember offhand, I'd have to have some way of refreshing my memory as to the date. It would be in the summer of 1944.

Q. Was he in the service at that time?

A. He was.

Q. Did you hear the testimony of Mr. Weber to the effect that he, too, went to see Don Reifsnyder in New York?

A. I did.

Q. Would you say that it was before or after that date?

A. I would say that it was after that date.

Q. How soon after?

A. Well, I would say shortly after.

Q. I believe the testimony was to the effect that Mr. Weber saw Don Reifsnyder about seven days before he committed suicide, the last time, as I recall.

A. Well, I don't recall the same statement, I couldn't answer that.

Q. Now, did you know that Mr. Weber had gone to New York to see Don Reifsnyder?

A. I couldn't say that Mr. Weber had gone.

Q. Well, did you know that some Government agent had either telephoned him or interviewed him in New York?

A. Yes, he so stated.

Q. How did you find that out?

THE COURT: He said he so stated; in the last (T. 450):

answer he said, "Yes, he so stated."

Q. You mean that Don Reifsnyder told you that?

A. That's correct.

Q. Well, where did he tell you that?

A. The first time he told it to me over the telephone.

Q. Certainly. In other words, then, the Government agents went to interview him and immediately he called you on the telephone, is that it?

A. Well, you supply the word "immediately."

Q. Well, soon after.

A. Soon after, yes.

Q. He called you on the telephone and—what did he tell you in that conversation?

A. He told me that he had been interviewed by the FBI and that they had obtained his file, that he had given them his file and in there was a document on which he had—this document showed a set of figures and it was incriminating to the extent that it showed that he had paid Don Johnson money.

Q. Then why did you go to New York?

A. Well, he wanted to talk with me.

Q. He wanted to talk to you?

A. That's right.

Q. And you took Dan Jenkins with you?

A. That's right.

Q. Did he write you?

A. What's that?

Q. Did you get any writings from him?

A. No, I didn't.

Q. Well, then, how long did your conversation last?

A. Oh, I couldn't say; maybe an hour or two.

(T. 451):

Q. Did you see him more than once?

A. After he came back to Scranton, yes.

Q. How many times did you see him in Scranton?

A. Well, seeing him and talking to him are two different things.

Q. Well, talk to him.

A. Talk to him?

Q. Yes. About how many times?

A. Oh, he played golf up at the club several times.

Q. I don't care what he was doing, about how many times did you see him?

THE COURT: How many times did you talk to him about this affair?

MR. MARGIOTTI: That's right.

THE COURT: Let us confine it.

MR. MARGIOTTI: That's exactly it.

THE WITNESS: Oh, I would say two or three times.

Q. Was there ever any person present except the first time when you talked in the presence of your lawyer, Dan Jenkins?

A. As far as I can remember, no.

Q. Now, do you recall where these conversations were?

A. Yes, they were all at the country club with one exception; on the morning that I was called in before the

Grand Jury I went, called him on the telephone, as I remember, or went out to his home and I asked him—

Q. I am not asking you what you asked him, I am only

(T. 452):

asking if you recall where these conversations took place.

A. At his home.

Q. At his home?

A. Not all of them, of course.

Q. Now, these conversations that took place with Donald Reifsnyder, whether three or four or what they were, were all before you appeared before the Grand Jury, is that right?

A. No.

Q. Well, how many were before the Grand Jury?

A. I would say two or three and then I would see him afterwards at the club, of course.

Q. Well, I am more interested now particularly about the ones before you got through testifying.

THE COURT: Before you got through or began, now, which?

Q. Either before you began or while you were testifying, because I assume you appeared several days, according to this record.

THE COURT: On different occasions, I think, he appeared.

A. What was the question again?

Q. You see you testified that before you began to testify before the Grand Jury that you had seen Donald Reifsnyder two or three times.

A. That's right.

Q. Am I right on that?

A. That's right.

Q. Now, then, while you were testifying, and before you
(T. 453)
finished your testimony did you see him during that time?

A. I saw him.

Q. During recess hours?

A. I saw him during that time but I don't ever remember discussing the case. He was giving testimony before the Grand Jury at the same time.

Q. All right. Then following those conversations with Donald Reifsnyder you went before the Grand Jury and testified?

A. That's right.

Q. And you knew at that time what he is alleged to have told the FBI?

A. Not in particular.

Q. In some instances?

A. Yes.

Q. All right. And did you know at that time what Mr. Knight had told the Grand Jury?

A. No, I did not.

Q. Or any of the other defendants?

A. That's correct.

Q. I see. And although—strike that, please. I will come back to that later, I just want to develop that fact first.

Now, you went before the Grand Jury and how long were you there?

A. Well, that's a very broad question, Mr. Margiotti.

Q. Well, about how many times did you appear before the Grand Jury? I am talking about what I would consider, and everybody else would consider your first appearance, with some interruptions by intermissions and so on.

A. Well, it continued over ten days, I would say it is ten times more or less.

(T. 454):

Q. And your testimony consists of about 73 pages!

A. Well, you have it, I have never counted them.

Q. All right. And during that time, so that we get this correct, you told a story which was not the truth!

A. That's correct.

Q. Were you ever examined by Mr. Goldschein here!

A. And others.

Q. And others. And prior to that time you had told a story, had you not, which was not the truth, when you were not under oath, of course?

A. That's right.

Q. To the investigators.

A. That's right.

Q. And when you were taken before the Grand Jury isn't it a fact that before every session, or almost before every session—I don't want to take the time of reading it in the record—that Mr. Goldschein, or whoever the Government representative was in the Grand Jury, warned you that it wasn't necessary for you to talk at all if the facts would tend to incriminate you? Weren't you warned?

A. That's right.

Q. And weren't you told that anything you did testify to might be used against you, yourself, in the event of a trial?

A. That's right.

Q. And that anything you said then would have to be voluntary, they weren't forcing you to talk, you were doing it voluntarily?

A. Well, that's substantially correct, yes.

(T. 455):

Q. That's correct. And with all that admonition you then told a story, the principal parts of which you say were untrue?

A. That's right.

Q. Did you appreciate at the time that you had raised your hand to God that you would tell the truth?

A. I did.

Q. Now, Mr. Michael, you say you first heard of a contemplated change of trustees in the Central Forging case through Donald Johnson?

A. I did.

Q. Was that in just an ordinary discussion or sort of a casual discussion that it was talked about?

A. No, I would say that it was a definite conversation in which he told me that there was going to be a change and suggested that I get in touch with his father.

Q. And suggested you get in touch with his father?

A. That's right.

Q. And it was thereafter that you concluded to see his father?

A. I did.

Q. You went to see his father and his father told you that there was going to be a change because Mr. Compton was going to resign?

A. Right.

Q. And you said, "Well, I'll look over this plant and business, and if I can do the work, I will do it, it has to be done in a hurry, in a few months' time"?

A. That's right.

Q. And the Judge said he would appoint you if you would consider, or he was considering appointing you?

A. That's right.

(T. 456):

Q. And then later, after making an examination of the plant, the Judge did appoint you?

A. Yes.

Q. In open court; as trustee?

A. Well—

Q. Or in his office, either way, it doesn't make any difference. You were appointed?

A. Oh, yes, I was appointed.

THE COURT: Let me ask you while we are on this subject, and pardon the interruption: When you went to see the Judge—

MR. MARGIOTTI: Yes, your Honor.

THE COURT: When you went to see the Judge about the appointment did you tell him that Donald told you to see him?

THE WITNESS: I did; yes.

THE COURT: And without revealing the conversation, was there any indication by the Judge that he expected you to come to see him?

THE WITNESS: No, I can't say that he did.

THE COURT: All right. Go on.

Q. Well, now, when did you first tell anybody this statement that you have now made, I mean anybody connected with the Government or in any court proceeding, that the Judge said that you told the Judge that Donald had asked you to go and see him? When did you first make that statement in any court proceeding before today?

(T. 457):

THE COURT: Or did you at any time before you just told me make it to anybody?

MR. MARGIOTTI: That's the question.

A. Yes, I believe my testimony the last time before the Grand Jury will reflect that I answered a question of that kind.

Q. You think you so testified before the Grand Jury. Now, this is the time, of course, that you were supposed to be telling the truth, that's the second time you went before the Grand Jury, that is, after you, yourself, had pleaded guilty, is that right, so we don't get ourselves confused?

A. I don't know from what testimony you are reading.

Q. No, no, I mean that is where you told that story.

A. That's right, if the question was asked of me.

Q. All right. We will see about it.

MR. MARGIOTTI: May I have that testimony? I handed it back to you last night.

MR. BROOKS: If your Honor please, just in order that the record may be clear, Mr. Margiotti spoke of a "second time" he appeared before the Grand Jury.

MR. MARGIOTTI: Yes.

MR. BROOKS: Let's not get that confused, he appeared many, many times.

MR. MARGIOTTI: I understand that. When I say the "second time" I mean when he changed his story.

THE COURT: He means before and after the "event."

(T. 458):

MR. BROOKS: I see.

MR. MARGIOTTI: That's it exactly.

Q. I will let you look at your testimony, starting with page 5509, just look at it, yourself, it starts about there (indicating).

THE COURT: Are you to have him read all of that?

MR. MARGIOTTI: No, only the part that refers to his conference with Judge Johnson; then I am going to ask him whether or not he testified that Judge Johnson told him—he told Judge Johnson that Donald had sent him to him.

THE COURT: Let me ask you, Mr. Margiotti, you spent last evening reading this.

MR. MARGIOTTI: It is not there.

THE COURT: Did anyone even ask him the question?

MR. MARGIOTTI: Oh, yes, indeed, they asked him for the entire conversation.

THE COURT: All right.

MR. MARGIOTTI: And don't think for a moment that Mr. Goldschein—

THE COURT: I didn't think the question was so important, I didn't mean to start all this fuss.

MR. MARGIOTTI: Well, you started it, Judge, and I just want to clear it up, that's all.

Q. What I want you to look for is whether there is any-

(T. 459):

thing in there that you told Judge Johnson that Donald had sent you to him.

A. Oh, I never testified that I ever did tell Judge Johnson.

Q. I understood that that is what you said to the Judge.

THE COURT: No, you didn't listen to all the question, he answered, if you go back to Mr. Barrows's record, he finished the answer with a statement something like this: "If I was asked the question."

MR. MARGIOTTI: He did that for me, he did that in cross examination.

THE COURT: He said, "If I was asked the question, yes," in answer to your question he said "Yes," he answered that way if he was asked the question or some such thing as that. That is why I asked you, after reading the testimony, whether you found any such a question in there.

MR. MARGIOTTI: There is no such quest
there is nothing in the record showing that he told
story before the Grand Judy. In other words, it is
consistent with his statement. I tried to develop
the first time he ever made the statement was to
when you asked him the question, which I thought
all right.

THE COURT: That is why—

MR. MARGIOTTI: But if a person asks an i
vidual to tell the whole story and he only tells par
it and

(T. 460):

he doesn't tell it all, it is something to be considered
to the weight of the testimony.

THE WITNESS: Well, the question here—

THE COURT: Maybe it is, but I doubt it.

Q. What is that?

A. The question here, as I understand it now, is
I tell the Grand Jury that when I entered Judge Johnso
chambers did I inform him that Donald had sent me?

Q. That's right.

A. Well, I believe that I did, that would be the f
mal opening thing. I can't remember my exact conver
tion in his presence.

Q. I am not asking you that. I am asking you whet
you told that to the Grand Jury, whether Donald sent you

A. I can't find that they asked me that question.

Q. Well, didn't they ask you to tell the story?

A. Well, this testimony is made up of questions.

Q. First answer my question. Didn't they ask you
tell the story?

A. No, I don't remember that he ever told me to tell a story, he asked me questions and I answered them and right there it says where I replied, "After a contact with Donald Johnson I went to see Judge Johnson."

Q. Yes, but you did not say that when you went to see Judge Johnson, that you told the Judge, "I am here because Don sent me here," and the first time you have ever told that story is today?

A. And you can't find a question in (T.461):
there where they ever asked me that question.

Q. Let's say that question wasn't asked, have you ever told that story before? "Yes" or "No".

THE COURT: Just a moment. He said time and time again and you have gone over and over it and I think it is adequately covered.

MR. MARGIOTTI: Do we understand, Judge, he admits he didn't tell it because he wasn't asked?

THE COURT: Otherwise we are only going to get into nothing but a brawl and I don't want it.

MR. MARGIOTTI: All right.

Q. Now, then, you did testify previously—previously you testified—

MR. PRATT: What page is that, please?

Q. (Continuing):—before the Grand Jury, and if I am wrong I will go directly to the testimony because I want to shorten this as much as possible—

MR. PRATT: If the Court please, counsel is referring to a transcript and I think I have a copy of it.

MR. MARGIOTTI: I am referring now, Mr. Pratt, to the transcript of August the 3rd, 1944.

MR. PRATT: And the page?

MR. MARGIOTTI: This is the testimony which you, yourself, used as the basis for the hearing before his

(T. 462):

Honor, Judge Smith.

THE COURT: Mr. Pratt is wondering what page you are going to read from. As I understand it, you are not going to read from any.

MR. MARGIOTTI: I want to read, but it is quite lengthy.

THE COURT: You frame a question and I will rule on it.

Q. Didn't you testify before the Grand Jury that your appointment came because of the fact that Judge Johnson knew you, that you had been appointed a trustee in the Edington case, that the Judge told you that you were doing a fine job, that there was going to be a change because Mr. Compton was going to resign and that he was considering appointing you? Didn't you so testify?

THE COURT: I am afraid, Mr. Margiotti, if you are going to draft a question as comprehensive as that the witness is entitled to his questions and answers before the Grand Jury, otherwise—

THE WITNESS: I can follow the question.

THE COURT: —otherwise it will lead to a dispute.

THE WITNESS: I can follow the question.

MR. PRATT: I would like to know which occasion before the Grand Jury he is talking about.

MR. MARGIOTTI: I have told you.

(T. 463):

THE COURT: We will have it all in a moment.

MR. MARGIOTTI: I told you August the 3rd, 1944.

MR. PRATT: All right, go ahead.

MR. MARGIOTTI: Page 4. Pardon me, sir, I may be wrong—no, it is 4, right at the top of the page, Mr. Pratt.

MR. PRATT: Page 4?

MR. MARGIOTTI: Yes.

Q. "Q. BY MR. GOLDSCHEIN: Mr. Michael, will you begin with your appointment as successor trustee of the Central Forging Company, how your appointment came about, and what you did in connection with the Central Forging Company, right up to date? Will you begin at the beginning."

Now, this is the honest testimony—1944 after you had had these three visits with Reifsnyder.

Your answer was, "Well, of course I had served previous to this as trustee, of which I am still serving, the case has never been closed, of the Edington Distilling Company and previous to the first of January, 1942, Judge Johnson sent for me to come into his office, which I did, and he told me about the condition which was existing down at the Central Forging Company in Catawissa, and he also told me that at that time that Mr. Compton, who was then trustee, had received an ap-

(T. 464):

pointment or an elective office, I don't know which it
at Harrisburg, and that he was leaving as of the firs
January, and it would be necessary to appoint a succe
trustee. He asked me if I could accept that appointm
and at the time he told me he said there was a situa
there that they are now engaged in making vital
contracts, principally sub-contracts from the Berw
American Car and Foundry Company, and that he was
desirous that the plant would be kept operating. I
him that I could providing it would not run over t
months, because—I don't know whether I have expla
that before, that at that time I was in a position where I
really working only from the first of April until the
of January, and that I had a full three months off. The
I could reorganize the company within that length of t
I would do it, providing I had an opportunity to go d
there, study the thing over, which I did. And I theret
came back and told him I thought I could do some g
down there, and I accepted the appointment."

Didn't you so testify?

A. I so testified and that is substantially correct
cept for one statement.

Q. What is that?

A. That is the statement that Judge Johnson
for me.

Q. That statement is wrong?

A. That's right. I did that for the protection and
keep the name of Donald Johnson

(T. 465):

ort of the testimony at that time.

Q. I understand that. Now, in January of 194

this is at the bottom of page 5—Mr. Goldschein said to you, "Judge Johnson called you to his office?" and you answered, "That is right."

That wasn't true?

A. No.

Q. That was—you did that to keep Don Johnson's name out?

A. That is correct.

Q. You didn't want to hurt Don?

A. That's right.

Q. "And discussed with you the condition of the Central Forging Company?

"A. Yes.

"Q. Had you discussed it prior to your discussion with Judge Johnson?

"A. No."

Did you so testify?

A. Yes.

Q. Now, on page 9, by Mr. Goldschein:

"Q. Let's go back to your conversation with Judge Johnson about your appointment. You say that up until that time you had not discussed the Central Forging Company with anyone and had no knowledge of the fact that you were going to be appointed?

"A. That is correct.

"Q. Did you have any knowledge before you were appointed as trustee that you were to be appointed trustee of that?

(T. 466):

"A. I had talked it over with Judge Johnson, yes.

"Q. Prior to the appointment?

"A. Yes.

"Q. With Donald Johnson?

"A. No."

Did you so testify?

A. Yes, if you are reading the answers. That is t testimony given originally.

Q. What is your recollection of it?

A. Oh, well, I can't recollect it and I think you a reading right. I testified so, I have testified that all of t statements in there, almost, were incorrect.

Q. That's correct. "During that time—" This is Mr. Goldschein again:

"Q. During that time you did not tell or discuss wi Donald Johnson the fact that his father had sent for y with reference to appointing you as trustee in the Eding Distilling Company," asked you how you got that appoin ment. And your answer was: "That I could not say. might have mentioned the fact that I had a talk with h father and he asked me about taking an appointment. don't know. I could not be sure. I don't remember though. I might have.

"Q. With reference to your appointment as trust of the Central Forging Company, did you discuss th with Donald?

"A. No. I have said that five times—no. I did n discuss—"

Did you so testify five times under oath?

A. I did.

(T. 467):

that's right.

Q. And Mr. Goldschein said, "You don't mind savi it a sixth, do you?" You answered, "No; No; I guess n If you don't mind the repetition."

A. That's right.

Q. Then you were asked this question—page 11, Mr. Pratt:

"Q. During that time did you see Donald Johnson prior to your appointment? From the time the judge first discussed it with you until the time you were appointed did you see Donald Johnson at that time?

"A. Yes, I apparently did. I saw him rather constantly. He lived in town at that time.

"Q. I believe you have already stated six times that although you did see him you did not mention the fact that his father called you in to discuss the appointment as trustee of the Central Forging Company.

"A. You did not ask me that. You asked me did I ever discuss the Central Forging with Donald Johnson, and my answer is no. I might have mentioned that I talked to his father or that after I was appointed I said I have been appointed. That I cannot remember to any definite degree, and I don't answer the question.

"Q. We are talking now about the interim from the time his father discussed the Central Forging Company with you to the time you were appointed.

(T. 468):

"A. That is right.

"Q. You said you saw Donald Johnson on several occasions?

"A. I said I might have seen him. I don't know whether he was even in town. He could have been in Kalamazoo at that time and I would not have missed him. But he was around, the chances. But if he was around, the chances are that I would have run into him. The same as many of my friends. I can't go back three years and say I saw

Sonny Edwards, or anyone in particular on a certain day. I don't remember. It certainly was not of any significance, any meeting I had with Donald Johnson prior to that appointment as trustee of the Central Forging Company. For me to say I did not see him—I don't know. Maybe you have somebody that will say 'I saw them talking together at Wyoming and Spruce St.' I can't say that. I don't remember. If I did meet him, it had no significance, at least no significance that made any impression on my mind that I could remember now.

"Q. After you were appointed did you discuss the matter with Donald Reifsnyder?"

Strike that last question out, will you please?

Did you so testify?

A. Yes, I probably testified to that, it is down in the record.

Q. Now, before I forget it, I might as well ask you now,

(T. 469):

did you have a memorandum book or a diary?

THE COURT: You mean during the course of these proceedings?

MR. MARGIOTTI: Yes, sir,—not the course of these proceedings.

THE COURT: You mean Central Forging.

MR. MARGIOTTI: That's right.

A. No, I wouldn't call it a book.

Q. Well, what would you call it, whatever it was that you had?

A. Well, I used to jot down on a memorandum the different trips that I took and so on, except in this particular

case, the Central Forging Company, Don Reifsnyder kept it.

Q. Well, Mr. Michael, you did have some sort of a little memorandum or book?

THE COURT: Let me find out. Was it a book?

THE WITNESS: No.

THE COURT: Well, what do you mean, you made notes on scrap paper?

THE WITNESS: We had a couple of sheets of paper, I used to jot them down and keep it in my desk of different trips we made.

THE COURT: Not a book, is that it?

THE WITNESS: No.

Q. Didn't you call it a memorandum before the Grand Jury?

(T. 470)?

A. Yes, I might have.

Q. And didn't Mr. Goldschein ask you to produce it?

A. I imagine he did.

Q. Yes. And did you ever go out and look for it?

A. No, because it had already been disposed of, I had given my figures to Daniel Jenkins for the purpose of making up an expense account to be submitted.

Q. Now, when did you give that memorandum, or whatever it was, to Jenkins, your attorney?

A. I don't remember offhand.

Q. Well, was it a short time before you went to the Grand Jury?

A. No, it was a short time before we presented a petition for fees and expenses.

Q. Say, by the way, you said Jenkins, did you mean Jenkins or Reifsnyder?

A. I said Jenkins and I meant Jenkins.

Q. And you meant Jenkins?

A. Yes.

Q. What did Jenkins have to do with the Central Forging?

A. I didn't keep any memorandum in regard to the Central Forging, that is what I have just finished testifying.

THE COURT: Central Forging was kept by Reifsnyder.

MR. MARGIOTTI: All right.

Q. Well, isn't it a fact that you swore before the Grand Jury that the memorandum that you are talking about you

(T. 471):

turned over to Mr. Reifsnyder, not to Mr. Jenkins?

A. I don't remember that I so testified.

Q. Well, let's read this question to you.

A. I might have been confused as to what memorandum they were talking about.

MR. PRATT: Just a minute, now. What page?

MR. MARGIOTTI: Page 57.

Q. "Q. BY MR. GOLDSCHEIN: Mr. Michael, did you look for that memorandum book that you had during the time that you were trustee of the Central Forging Company, in which you made entries of expenditures?"

And you answered:

"A. I did, and I have been unable to locate it, and it is my belief that I had turned it over to Mr. Reifsnyder at the time that he prepared the expense account."

Didn't you so testify?

A. I probably did, but there would be a little confusion here as to just what is being discussed. I would turn over to Mr. Reifsnyder any amounts of moneys that I had paid out, such as phone calls or anything, and it wouldn't be considered, I wouldn't consider it a memorandum book, and yet if the question was put to me as a memorandum book, I might not have taken time at that particular moment to correct the impression.

Q. Well, is it a fact, Mr. Michael, that Mr. Goldschein asked you a number of questions concerning this memorandum

(T. 472):

book and then asked you to see if you could find it and bring it before the Grand Jury, as any prosecutor would?

A. I don't remember, I don't remember. If you have the record there and you want to read it to me, I might be able to answer the question.

Q. I will come back to it later. But there was a memorandum of some kind in the Central Forging that you turned over to Reifsnyder?

A. Well, it would be—whether you call it a memorandum or simply a bill—

Q. Or sheets, I don't care what they were, they were turned over to Reifsnyder?

A. That's correct.

Q. Have you ever seen them since that time?

A. No.

Q. Did you have this file that you say was your joint file? Did you ever see them in there?

A. No, I did not.

Q. O. K. Now, you have testified to a conversation in which you say that Mr. Reifsnyder told you over the telephone that he had been interviewed by the FBI and they had his file and he had given some memorandum, I assume those yellow papers, or something like that. Were you not asked this question by Mr. Goldschein and was this not your testimony—

MR. PRATT: Page?

MR. MARGIOTTI: We are talking now about page 50.

MR. PRATT: Page 50?

MR. MARGIOTTI: Yes.

Q. "Q. Now, do you recall talking to Mr. Reifsnyder

(T. 473):

over the telephone from New York?

"A. Yes, he called me up.

"Q. What was that conversation?

"A. Well, he said that the FBI men had been down to see him in reference to the Central Forging Company.

"Q. What else?

"A. That is practically all that was said.

"Q. Did you say anything to him?

"A. No, other than the fact that I said, 'What did they want,' and so on, and he told me they had asked him various questions and he said he had turned over the file to them.'

"Q. Did he tell you what he had said?

"A. No, he did not. Our conversation was not over one minute, if it was that long. Very brief.

"Q. Did he mention the memorandum that he had in that file?

"A. Memorandum?

"Q. Yes."

Your answer was "No."

"Q. Distribution of funds?

"A. No, he never said anything to me about any memorandum.

"Q. Didn't say anything to you about it at all?

"A. No."

(T. 474):

Did you so testify?

A. I did.

Q. Now, then, we come back to your testimony on Donald Johnson on page 32, Mr. Pratt.

"Q. Now, Mr. Michael—" This is by Mr. Goldschein. "—Mr. Michael, did you ever tell Donald Reifsnyder that Donald Johnson needed some money?

"A. I don't ever recall that at all, and I wouldn't know whether he needed it or not, so therefore I would say I never said any such a thing.

"Q. You didn't say that?

"A. No.

"Q. Now, did you ask Donald Reifsnyder whether or not he thought he was obligated to Donald Johnson for his appointment?

"A. What was that question again?

"Q. Did you ever ask Donald Reifsnyder whether or not he thought that you were both obligated to Donald Johnson for your appointment?

"A. No, I never discussed the question. Did I ever ask Donald Reifsnyder if I thought that he was—.

"Q. If he thought—.

"A. If he thought that he was obligated to Donald Johnson for his appointment? No, obviously not, and I don't think he was. I know he wasn't so far as I was concerned, no one ever suggested Donald Reifsnyder to me. I alone am

(T. 475):

responsible for asking Donald Reifsnyder to serve, and I was very happy at the time when Judge Johnson agreed to appoint him to represent me.

"Q. And Donald Johnson never told you that Donald Reifsnyder would make a good selection as attorney?

"A. No. At least he never made any remark like that before he was appointed. It might be he might have said, 'Well, you have got a good lawyer,' afterwards, and I don't even recollect that, but he never insinuated to me or had any dealings or never has as to who I would have for my lawyer. I am certain I never even discussed it with Donald Johnson, any phase of it.

"Q. And of course if he had, you wouldn't have called it any suggestion anyway?"

MR. PRATT: Pardon me, you didn't intend—

MR. MARGIOTTI: "And of course if he had," is that what you mean?

MR. PRATT: "I am certain I never even discussed—"

MR. MARGIOTTI: "I am certain I never even discussed it with Donald Johnson, any phase of it." Is that correct?

MR. PRATT: That is correct. I know you didn't intend to do it.

MR. MARGIOTTI: I make a mistake like anyone else.

THE COURT: Now, Mr. Pratt said—

(T. 476):

"Q. And of course, if he had, you wouldn't have followed his suggestion any way?

"A. Well, are you anticipating something?

"Q. I am asking you.

"A. No, I wouldn't."

Now, that was your testimony, wasn't it?

A. Before the first time?

Q. Just answer the question. Was that your testimony?

THE COURT: He is asking you one now.

Q. What were you going to ask me?

THE COURT: As to the time, I think you didn't hear him.

Q. This was your first appearance, I say "first," before you entered your plea?

A. In other words, that was the first time I appeared before the Grand Jury.

Q. No, you appeared—

A. The first group of times.

THE COURT: Yes, that first eight or ten, whatever it was.

Q. That's right.

A. That I so testified to for the reason already given.

Q. Yes, because you were protecting Don Johnson, there is no question about that in your mind. You would do that for a friend, wouldn't you?

A. I would—I did.

THE COURT: Let's not argue about it.

Q. Would you do anything to save yourself?

(T. 477):

MR. BROOKS: We object to that.

THE COURT: No, I will let him answer it.

Q. Would you do anything to save yourself?

A. I wouldn't lie to hurt a friend to help myself but I would and did lie to help a friend.

Q. Answer my question: Would you do anything to help yourself? Answer "Yes" or "No."

A. I can't answer such a question as that, help myself when, where, under what circumstances?

Q. Well, save yourself from a sentence, for instance.

A. From a what?

Q. A sentence.

A. I would if it didn't hurt anyone else.

Q. I see. In other words, you would lie to save yourself provided you didn't hurt anybody else?

A. Not necessarily. I didn't say any such thing.

Q. Well, what did you say?

A. Well, then, I missed the significance of your question if I answered it that way.

Q. Now, for instance, now,—where is that indictment in this case?

(The indictment referred to was handed to Mr. Margiotti.)

Q. It has already been established, you have admitted when Mr. Levy was examining you—I haven't seen this, let me look at it.

(T. 478):

Pardon me, Judge, there is some confusion here about pleading to one count and I see this indictment, I may be wrong myself, I don't know what the situation is, see this indictment says he pleaded guilty to the whole indictment.

MR. PRATT: Which indictment is it?

MR. LEVY: The last indictment, the indictment presently on trial.

MR. PRATT: The present indictment.

MR. MARGIOTTI: Where is the present indictment?

MR. LEVY: You have got it right in your hand.

MR. MARGIOTTI: Well, this says general.

MR. LEVY: That's right, and he pleaded to the three counts in the indictment.

MR. MARGIOTTI: Where is the idea about the one count?

MR. LEVY: That is in another indictment.

MR. MARGIOTTI: May I have the other indictment, too, then, so we can get that?

MR. PRATT: I haven't that. The other indictment is in four counts, and he pleaded to just one count.

MR. MARGIOTTI: But I want to get the indictment, I don't want to make mistakes.

THE COURT: As I understand it here, gentlemen, let's not throw this into confusion, the defendant, as I recall it, handed a plea of guilty to one count of an (T. 479):

earlier indictment. Thereafter the earlier indictment was superseded by the indictment in this case. Is that not right?

MR. MARGIOTTI: That's the first time I heard that, I don't know about that.

THE COURT: That is the effect of it.

MR. PRATT: I suppose it is, yes.

THE COURT: But both indictments apparently remain open. Now, the nature of the plea to this, I don't know whether it was a general plea or whether or not it followed the same course as the first.

MR. MARGIOTTI: It inserts "general."

THE COURT: But when he entered his plea before me I thought he likewise made a similar reservation; in that I may be mistaken.

MR. MARGIOTTI: I see. I just wanted to get that cleared for the record.

THE COURT: I am not certain that the witness is fully clear on it himself because at that time he was represented by counsel.

Q. By the way, who was your attorney when you pleaded guilty to this indictment?

MR. PRATT: Which indictment?

MR. MARGIOTTI: The indictment in this case that is in my hands right now.

(T. 480):

MR. PRATT: This present case right here?

MR. MARGIOTTI: This present case we have been sitting here for about 10 days on.

A. Daniel Jenkins, Stanley Coar and Robert T. MacCracken.

Q. And were they all in court?

A. Robert T. MacCracken wasn't.

Q. What's that?

THE COURT: "Robert T. MacCracken wasn't."

A. Robert T. MacCracken was not in court and I don't remember whether the other two or either one of them was, I am not sure.

Q. I see.

MR. MARGIOTTI: May I have the other indictment, please?

MR. BROOKS: The clerk ought to have it.

MR. MARGIOTTI: Somebody told me I couldn't have it when I asked for it before. I may be wrong about that.

THE COURT: He doesn't have it in court and I don't see its materiality.

MR. MARGIOTTI: Judge, I would like to look at it.

THE COURT: Oh, you can look at it.

MR. MARGIOTTI: Maybe it doesn't mean a thing.

THE COURT: I don't want to confuse the jurors with two indictments. It is difficult enough to follow one.

(T. 481):

MR. MARGIOTTI: I don't want to confuse the jury, I want to do everything I possibly can not to.

THE COURT: You look at it, at the recess and Mr. Kaufman will make it available, and if it has any relevancy to the issue in this case I'll let you use it.

Q. Now, Mr. Michael, is that your signature on the indictment?

A. That's right.

Q. And in the presence of your two attorneys did you plead guilty to the whole indictment?

A. Well, obviously.

Q. First answer the question and then explain it, will you please?

THE COURT: Let the witness look at it and explain it if he can.

Q. If he can.

A. Yes, I pleaded guilty to this indictment.

Q. And this is—

A. Which is a conspiracy charge.

Q. The indictment charges more than conspiracy, you knew that. You mean to say that you don't know that this indictment charges more than conspiracy that you pleaded guilty to? Do you mean that?

A. Well, yes, I would say it contains more, it would have to contain more in order to be a conspiracy, a conspiracy just can't be a conspiracy, it has to allege certain wrongs that are done.

Q. Certain wrongs, and one of the wrongs is that it is alleged in the indictment, the first count in the indictment,

(T. 482):

that you knowingly, unlawfully, fraudulently and feloniously appropriated to your own use moneys and funds in the sum of $3,000 which belonged to the estate.

A. Well—

Q. That is one of the counts.

A. All of that—

Q. First answer "Yes" or "No" and then explain all you please.

THE COURT: Well, you ask him whether or not it says that; you just read it.

MR. MARGIOTTI: It does.

Q. And you knew you were pleading guilty to it?

A. That's right, I don't deny that.

Q. You don't deny it. Now, then, this indictment to which—your plea, rather, was on June the 19th, 1945, is that right?

A. If it so states there, yes. I will take your word for it.

Q. That is very kind of you. Now, then, when did you appear before the Grand Jury?

A. August the 3rd, 1944.

Q. After you had entered your plea, of course?

A. No, no, that was way before, that is in another year.

Q. I mean to tell the truth, as you call it.

A. Well, it was some time in the spring, as I recall it.

Q. But it was after you entered your plea?

THE COURT: Was it before or after you entered your plea to the indictment Mr. Margiotti has in his hand?

(T. 483):

THE WITNESS: I think it was—before.

Q. You had already entered a plea of guilty before you went before the Grand Jury and told the truth, as you call it?

A. Are you speaking of the other indictment?

Q. Yes.

MR. PRATT: This is very confusing.

THE COURT: No, no, he entered a plea of guilty to the other indictment.

THE WITNESS: Yes, I had.

MR. MARGIOTTI: See, there was a plea standing at that time—

THE WITNESS: I had pleaded guilty to one count in the first indictment.

MR. MARGIOTTI: If your Honor please, I would like to have the other paper before I proceed further, it is confusing to me without having it and I don't want to confuse the jury or anybody else, but I think it is important, his going before the Grand Jury and telling the story which he says was the truth. We can get it at the recess.

THE COURT: All right, we will take our morning recess if it becomes so important. The witness may step down.

The jurors may retire.

(The jury retired.)

(T. 484):

(A short recess was taken.)

MR. MARGIOTTI: Could I come to the side bar?

THE COURT: Yes, surely.

(Discussion off the record at side bar.)

BY MR. MARGIOTTI:

Q. Mr. Michael, I want you to look at the indictment, No. 11,313, March Term, 1944, against you, individually, and look at the plea there over your signature before I ask you some questions. It will make it a little shorter.

A. I have read it.

Q. All right. Now, Mr. Michael, on the 19th day of March, 1945, by leave of court you withdrew your plea of not guilty to the fourth count in the indictment to which I have just referred and entered a plea of guilty to the fourth count in the indictment which charges you with knowingly making a false return to the court in connection with your report as trustee, is that right?

A. I understand the question; yes.

Q. Is that correct?

A. That's right.

Q. That was on, as I said, the 19th of March.

A. I think it was.

Q. Now, then you went before the Grand Jury with a new story that you have characterized, and after that, August the 3rd, 1944—

MR. PRATT: No, no, your Honor.

(T. 485):

MR. MARGIOTTI: Pardon me. Withdraw that.

MR. PRATT: April 4 and April 5 of this year, 1945.

Q. April 4th and April 5, 1945, is that about right?

A. That's right.

Q. April 4th, that happens to be my own birthday so I will remember that date. Now, you have not yet been sentenced on the first indictment on the one count?

A. Quite obviously.

Q. Just answer the question, I don't want to get into any argument.

A. Yes.

THE COURT: He hasn't been sentenced to any.

Q. As the Court has said, you haven't been sentenced on either one. Did you have any understanding, agreement, directly or indirectly, with representatives of the Government prosecuting this case, or the FBI agents, that if you would testify and change your story that you would be given leniency by recommendation to the Court?

A. No, I have not.

Q. You have not. Did you—strike that. In taking the witness stand in behalf of the Government in this case, do you, in your own mind—now, don't answer this until the Court tells you to—do you, in your own mind anticipate and hope that because of the testimony that you are giving for the Government, favorable testimony for the Government, that you will be shown some leniency, at least to the extent

(T. 486):

of a recommendation of mercy on the part of the Government agents to his Honor, Judge Smith?

MR. PRATT: I object, if the Court please.

THE COURT: No, I will let him answer whether or not he entertains a hope of any such recommendation.

MR. MARGIOTTI: That's right.

Q. Answer the question "Yes" or "No," do you or don't you?

A. Well, I don't think I should answer the question "Yes" or "No."

THE COURT: Well, answer it the way you see fit to answer it.

A. Why, I hope, yes, that by telling the truth here that I won't have anyone—that they won't feel it would be the difference between whether you come in and fight or whether you come in and when it is hopeless, why, just say so, which I am doing.

Q. You then hope, you say, that because of the story you are telling, which you say is the truth, that some leniency will be shown to you?

A. Hope is always—

Q. Answer that "Yes" or "No."

A. Yes. Hope is always there.

Q. Now, then, Mr. Michael—

THE COURT: I think the record ought to reflect for the benefit of all defendants and witnesses that no representative of the Government can make any commitment

(T. 487):

on behalf of this Court. I have no official or unofficial representative. I listen to counsel from both sides, the judgment is ultimately mine and I am guided by my own conscience. All right.

MR. MARGIOTTI: And as I know this Court I am certain of it.

THE COURT: Yes. All right.

Q. Now, you testified before the Grand Jury, Mr. Goldschein started a contempt proceeding against you before his Honor, Judge Smith?

A. That's correct.

Q. And there was a hearing here in court and then after the taking of testimony his Honor, Judge Smith, found you guilty of contempt and found that you had wilfully and corruptly sworn falsely before the Grand Jury. You knew that?

A. Why, yes, he found me guilty of contempt of Court. I am not quite sure of your terminology there.

Q. Well, it amounts to the same thing.

THE COURT: He knows he was adjudged in contempt and sentenced to a term of imprisonment of six months.

Q. And you know that the Judge gave you six months for that too, don't you?

A. Oh, definitely.

Q. And you took an appeal to the Circuit Court of Appeals?

A. That's correct.

Q. And just the other day your lawyers, and you said, yourself, argued your case in the highest court of the land. (T. 488):

the United States Supreme Court?

A. That is correct.

THE COURT: And he is still entertaining hopes that he may succeed there.

Q. You are still hoping on that?

A. Well, I don't think there is anything wrong in hoping.

Q. No, of course not. Now, Mr. Michael, where did this idea of taking $3,000 first originate? Where did it happen first?

A. I couldn't answer that in a factual way.

THE COURT: You mean where or with whom?

Q. Who and how and what—withdraw it all. Who is the first person who conceived the idea that you and Reifsnyder should improperly take $3,000 as fees, or to be called fees, or to get it no matter what you called it, out of this estate?

A. You mean from my knowledge whether it was Reifsnyder or Michael, is that what you mean? I don't quite understand.

THE COURT: Nor anyone else.

Q. I want to know who. I don't care whether it was you or Reifsnyder or any other defendant or any other human being, who was it, who was the man that originated this thing? You know what I am talking about.

A. All I can say is that the first time I heard of it was when Donald Reifsnyder broached it to me.

Q. And that was on February 13, 1942?

A. I think that is correct, yes;

Q. On your way back from Harrisburg, as you testified?

(T. 489):

A. That's right.

Q. And prior to that time nothing was said by anybody concerning improperly taking $3,000?

MR. PRATT: From his knowledge, I assume you mean.

A. To my knowledge.

Q. So far as you know.

MR. MARGIOTTI: Where is the letter of January 29th?

MR. PRATT: Here is a photostatic copy of it.

MR. MARGIOTTI: I will get the copy myself.

Q. I notice in this letter of January the 29th from Mr. Knight to Donald Reifsnyder—and you say you got a copy of it—among other things Mr. Knight, after stating how money was to be divided and so on, said this: "Add to these last two items a very rough estimate of the expenses, we would have a total of not to exceed $20,000 or $21,000 so that all of these could be paid out of the net current without even using any of the supplies and have a few thousand dollars left.".

Do you remember that?

A. Well, I would have to read it over again.

THE COURT: Let him look at the letter.

MR. MARGIOTTI: Yes, all right.

Q Look at the letter to see.

A. This is a—.

Q. First look at the letter and then talk. It is at the top of the page, the last page, Mr. Michael. (T. 490):

A. (After examining): Well, I could say that I remember something about it. Of course we went on, this is only the draft of Mr. Knight's, a preliminary draft, and from that, of course, there was other conversations and other understandings, other negotiations.

Q. I understand that.

A. Until the final plan so that for all practical purposes you can compare it with the final draft of the plan and that part of it that remains in there, remains in there, but the opinion of Mr. Knight is all that letter conveys.

Q. Isn't it a fact, Mr. Michael, that you and Don Reifsnyder, upon ascertaining that you could pay off the creditors the amount that they had substantially agreed to take, or would agree to take, you'd still have a few thousand dollars left?

A. Well, of course that statement is a supposition on your part and, naturally, it would have to be a supposition on our part.

Q. I don't want a supposition.

A. Well, it can be nothing else because, after all, we do not know or couldn't have known at that time the amount of the fees that would be allotted by Judge Johnson.

Q. All right. But when there is a statement to the effect that the carrying out or paying out on the expenses and so on and still have a few thousand dollars left, didn't (T. 491):
you and Don Reifsnyder conceive in your own minds some method of grabbing or taking those few thousand dollars that were going to be left?

A. No, that isn't at all true and as a matter of fact, I couldn't even tell you what Mr. Knight is referring to when he says, "Have a few thousand dollars left," unless he knew, unless he knew what the fees were going to be. I will assure you I didn't. If he had knowledge—

Q. You know that when you got through there was nothing left?

A. Naturally, the Judge allotted all the fees, divided it up in proportion to the way he saw fit.

Q. And you got the $3,000 extra?

A. What's that?

Q. You got $3,000 extra?

A. Well, that was taken before there was a report made to him showing that, so he allotted whatever the report to him showing how much was available for distribution for fees, he allotted that out.

Q. Mr. Michael, isn't it a fact that in your discussion with Mr. Knight in the presence of Don Reifsnyder, on several occasions, particularly April, 1942, you told Mr. Knight that you were dissatisfied with the fees that you were going to get and that you wanted more fees?

A. No, I never said that.

Q. Didn't Mr. Reifsnyder say that?

A. No, neither one of us, both of us were well satisfied.

Q. Well satisfied?

A. That's right.

Q. Will you please tell me what it was that you or Mr. (T. 492): Reifsnyder said, either individually or by the direction or concert of each other, to Mr. Knight or Mr. Fenner or any of these gentlemen here charged, as to why you wanted $3,000 that you were not entitled to? What did you tell them you wanted it for?

A. I didn't tell them.

Q. Well, you got the money?

A. That's right.

Q. And these men agreed to give it to you?

A. That's right.

Q. And do you mean to say that there was no reason given but you just simply took the $3,000.

A. Oh, no, the money was gotten to give to Donald Johnson.

Q. Oh, please answer the question. What did you tell Mr. Knight or these other men as to why you wanted $3,000 you were not entitled to?

A. Why, I didn't tell them anything.

Q. And they just voluntarily agreed, then, to give you $3,000?

A. No, Don Reifsnyder told me that he had felt Mr. Knight out and Mr. Knight was agreeable and thought it should be done, that it was always done in these kind of cases.

Q. Isn't it true that Mr. Reifsnyder—

MR. LEVY: One minute, please.

THE COURT: One moment, please.

MR. LEVY: I object to that answer and ask that it be stricken out upon the grounds that it is hearsay

(T. 493):

testimony, first, not in the presence of Mr. Knight; secondly, that it is hearsay testimony on hearsay testimony; thirdly, that it is a verbal act with which the defendant Knight cannot be bound to a legal obligation set forth in this indictment; and, further, upon the ground the testimony of the witness, what Mr. Reifsnyder told him Mr. Knight had said is clearly incompetent because the statement made, the verbal act testified to was not in the furtherance of any conspiracy. And during the furtherance of any conspiracy—

THE COURT: Just a moment, Mr. Levy. Let me hear the question, Mr. Barrows, and the answer.

(The question and answer were read by the reporter.)

THE COURT: You see, Mr. Levy, if I appraise the situation it would appear this testimony is in substantial agreement with his direct testimony and would—

MR. LEVY: If your Honor please—

THE COURT: Just a moment, please.

MR. LEVY: Pardon me.

THE COURT: And it would appear that the testimony does refer to occurrences during the course of the conspiracy and may be incurred in furtherance of it. But aside from that, I assume Mr. Margiotti, now defending Mr. Johnson, may well have a right to insist that

(T. 494)

that answer remain for two reasons: First, to the extent that it may exculpate his client and, second, to the extent that it may affect the credit to be given the testimony of this witness as to the defendant Johnson. I don't know that Mr. Margiotti is willing to have it stricken from the record:

MR. MARGIOTTI: I can say that I was waiting until both the Court and Mr. Levy were through to say that so far as we are concerned we don't want it stricken from the record.

Colloquy

THE COURT: I will have to overrule your objection, Mr. Levy, and allow you an exception.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U.S.D.J.)

MR. LEVY: May I advise the Court on what my legal—

THE COURT: Yes, I will hear you further if you think it is necessary.

MR. LEVY: As I understand it, if your Honor please, the statement made by the witness is what is called in the law as a vicarious admission. Where there is a vicarious admission in the furtherance of a conspiracy under certain circumstances it is admissible but under other circumstances it is not, and I would like to

(T. 495)

read to the Court what Professor Morgan of Harvard has said on this very proposition in conspiracy, if the Court will permit me.

THE COURT: I like Professor Morgan but he and I are on substantial disagreement on many things, among them is thought on rules of evidence. He would upset the whole system built up over many years and set up a new one that he has devised, and I don't care to hear it from you at all. If you have a Supreme Court decision that binds me under the circumstances I will listen, but nothing that Professor Morgan says can bind me. As a lawyer I entertain an independent opinion and as a lawyer he has a right to his, there

is no binding obligation that I follow any statement of his and, as I said, on his idea of the code of evidence he and I are in substantial disagreement because he is in disagreement with the many written decisions that have come down over the many years and have had the test of experience. His code of evidence hasn't had any such test.

MR. LEVY: If your Honor please, he cites—

THE COURT: I sustain the objection.

MR. LEVY: All right.

THE COURT: If you have a decision you have read that you want to cite, I will hear it.

(T. 496)

MR. LEVY: I think I can cite the Court a Circuit Court of Appeals case cited by the writer.

THE COURT: What is it?

MR. LEVY: I can't give the Court the present opinion but I can find it very shortly.

THE COURT: Citation is the thing. I like to read the cases myself. I find that even lawyers differ in their interpretation of cases. Let's go on.

Q. Mr. Michael, were you in court when the Government introduced as part of its case in evidence—

A. Pardon me, I didn't hear that.

Q. Strike it out, I will start over again. Were you here in court when the Government introduced as part of its case the alleged admissions or statements of Mr. Knight, Mr. Fenner, Mr. Davis?

A. You mean when they were read to this jury?

Q. Yes.

A. I was.

Q. Yes.

A. I was here for part of it.

Q. At any rate, were you here when that part was read of Mr. Knight's testimony to the effect that you and Mr. Reifsnyder, one or both together, had suggested that you were having difficulty, that you were dissatisfied with the fees and that you wanted to get more money for yourselves? You remember that?

A. I remember Mr. Knight testifying to that.

Q. Yes.

A. (Continuing): In my contempt proceeding

(T. 497)

case.

Q. Well, that's exactly it. That is what was introduced here, Mr. Michael. Now, then, do you say that it isn't true that you were dissatisfied with your fees and that you were not trying to get $3,000?

A. Well—

Q. (Continuing): For that purpose, at least apparently so, with them?

A. Well, your question is ambiguous, it is double.

Q. Well, I will make it so that you can understand it. Do you say that you, that you did not represent to these gentlemen that you wanted more money for your fees because you were dissatisfied?

A. Yes, Mr. Knight is mistaken in that matter.

Q. He is mistaken. All right. Well, did you ever tell either one, any one of these other defendants, what

the $3,000 was for? Just answer that "Yes", or "No." Did you ever tell any one of these three men what the $3,000 was for?

MR. PRATT: It has already been answered, if the Court please.

THE COURT: I will let him answer it again; he has answered it before.

MR. MARGIOTTI: I don't think so, Judge.

THE COURT: Yes, twice he said he did not.

MR. MARGIOTTI: Well, if he said that and it is on the record, I will withdraw the question.

(T. 498)

Q. Is that your answer?

THE COURT: Wasn't that answered before? Read the question and let him answer it.

Q. (Read by the reporter.)

A. I don't remember that I ever told him. I think Mr. Knight understood what it was for.

THE COURT: No, no.

MR. MARGIOTTI: I ask that that be stricken out.

THE COURT: Yes, that may be stricken. The question is whether or not you ever told him.

THE WITNESS: Well, in our conversation on April the 8th in Mr. Knight's office it was talked over and understood and—

Q. Not what was understood, what was said.

THE COURT: What was talked over?

THE WITNESS: That the money that was to be paid this way was to go to Donald Johnson.

Q. Do you mean to say that that was said on April the 8th in the office of Mr. Knight?

A. That is my recollection.

Q. And that the name of Donald Johnson was mentioned?

A. I don't know whether Donald Johnson's name was distinctly mentioned.

Q. Well, you just now got through saying it here, right in the presence of this jury, that Donald Johnson was to get that money. Did you just say it within two minutes?

A. Well, then, I will say that his name must have been men-

(T. 499)

tioned.

Q. First, didn't you say that? You know that you said it.

A. Yes.

Q. All right. Now, then, is it true or untrue?

A. It is true.

Q. And Donald Johnson's name was mentioned?

A. In connection with the $2,500, yes.

Q. Oh, $2500.

A. Or the $3,000.

Q. Which was it?

A. Well, the $3,000, what was left of it after Mr. Fenner's share.

THE COURT: Wait a minute.

MR. MARGIOTTI: Pardon me, Judge.

THE COURT: The only difference, there are not two sums involved, the $2500 is a part of the whole, which is $3,000.

MR. MARGIOTTI: Oh, I get that, I get that.

THE COURT: All-right.

Q. And that was on April the 8th?

A. That is my recollection.

Q. That is your recollection. Isn't it a fact that you testified in this very court, in this very case last week that Donald Johnson's name was never mentioned in Mr. Knight's office? Didn't you swear to that?

A. In what court?

Q. This court, in this case.

A. Well, that was only in conjunction with the fact whether he was to receive the

(T. 500)

check was to be made out to Donald Johnson.

Q. Isn't it a fact that you also testified before the Grand Jury at a time when you were supposed to be telling the truth that Donald Johnson's name was never mentioned?

A. Well, if I did, it was only in connection with—

Q. Wait a minute.

THE COURT: You go on, Mr. Michael, and you be quiet, Mr. Margiotti, and let him finish the answer.

MR. MARGIOTTI: Let me ask this, please—

THE COURT: You see, if both of you talk at once I can't follow either of you, Mr. Barrows is the only one who has acquired that particular aptitude.

MR. MARGOTTI: It is my impression of the law when you ask a witness a direct question that can be answered "Yes" or "No," he should so answer, and if he needs an explanation then he may explain to his heart's content, but he should not give an explanation without answering the question. Now, that is the only reason I was objecting.

THE COURT: Well, regardless of the law, I have learned from a short experience that with two or three people speaking at the same time I can't follow either of them.

MR. MARGIOTTI: I have learned the same thing.

THE COURT: Now, I don't know what you have said

(T. 561)

and I don't know what the witness has said and I am sure at least some of the jurors are probably in the same quandry.

MR. MARGIOTTI: Judge, I agree with you, I agree with you, but I do think that the witness ought to first answer. I wouldn't have interrupted the witness if he had answered the question, I interrupted him because he wasn't answering the question and I think the witness ought to be asked, when a question can be answered "Yes" or "No," to answer it that way and that if he wants to explain it, go ahead and explain it, but he ought not to go on to something without answering the question first.

THE COURT: Are you finished?

Mr. Barrows, read the question for the witness.

(Question read by the reporter.)

THE COURT: Finish it.

A. Well, I would like to say here that there is a little confusion over the mentioning of Donald Johnson's name in Mr. Knight's office on April the 8th, 1942, and there is two different angles to the mentioning of his name. First, it was developed by Mr. Fenner that Donald Johnson's name was mentioned in connection with the payment directly to him of the $3,000.

Q. And where do you think that was developed?

A. By Mr. Fenner's testimony.

(T. 302)

Q. By Mr. Fenner's testimony?

A. That's right, that's right, in this court. He said that Donald Johnson's name was first proposed, the check should be made payable to him. Now, I deny that and that is the question that I thought that you were propounding to me and I don't ever remember it was ever asked of me either here in the Grand Jury room, whether it was talked over in Mr. Knight's office about Donald Johnson being the ultimate receiver of this money, I don't think that question was ever asked of me until it was asked right here, and I say now that it was talked over and it was understood that that is where the money was to go, but when you ask me the same question again, I say to it on the one hand "yes" and on the other "no." There are two separate questions.

Q. Are you through?

A. Yes.

Q. Had you, prior to your statement here on the witness stand right now, ever told a Grand Jury body, a Government agent or the Court that the name of Donald Johnson was mentioned there and that the ultimate money was to go to him? Answer "Yes" or "No" to that question.

A. Well, there is a little confusion here yet.

Q. You understand the question.

A. I would like to have it asked again.

THE COURT: All right, Mr. Barrows, read it.

(Question read by the reporter.)

A. Have I ever said that? I don't think I did. I don't
(T. 503)
remember, though. I have already said that I don't think the question was asked me.

THE COURT: Of course I could say he never told it to me because he never spoke to me about it.

MR. MARGIOTTI: I meant in a court proceeding, I don't mean privately.

THE COURT: He didn't testify in the other case, Mr. Margiotti.

MR. MARGIOTTI: I wanted to make my question all-inclusive.

THE COURT: Yes.

MR. MARGIOTTI: I didn't mean that he had talked to the Court privately.

THE COURT: I understand that. But he didn't testify in his own hearing.

MR. MARGIOTTI: I understand that.

Q. Mr. Michael, do you mean to say that Mr. Goldschein and all the FBI agents that have been working on this case for a long time never asked that question, either in the Grand Jury or out of the Grand Jury? Is that what you want to tell this Court and jury?

A. I couldn't remember.

Q. Oh, you can't?

A. I couldn't remember whether they asked me that specific question in regard to that particular person.

Q. All right. Now we are going to come to that, too. (T. 504)

You have testified that Mr. Fenner somewhere said that Donald Johnson's name had been mentioned. Now, where did Mr. Fenner ever make that statement?

A. I wouldn't have any idea. Where did I testify to that?

Q. Just a moment ago.

MR. ROBINSON: I would like to have that read.

A. What was that question again?

Q. Didn't you say in explaining the naming of Donald Johnson that Mr. Fenner had testified or had said that Donald Johnson's name had been mentioned?

A. I never made any such a statement.

MR. PRATT: May we have that testimony read?

MR. MARGIOTTI: Well, I understand that and I may be wrong.

THE WITNESS: Well, I am sure that you are, Mr. Margiotti, on that.

MR. PRATT: I am sure—it occurred to me that the witness had misspoken one name for another.

MR. MARGIOTTI: It may have occurred to you that way but he did say "Fenner," and then he said it twice. I asked him specifically.

THE COURT: You and I will watch this, you just be quiet, counsel are going to talk back and forth among themselves.

Q. Well, now, you say you didn't mention Mr. Fenner at

(T. 505)

all in that connection?

MR. PRATT: If the Court please, in order to clarify this matter may we have the testimony read which the witness just a few moments ago stated in connection with Mr. Fenner?

THE COURT: Yes, he made some comment on Mr. Fenner's statement.

MR. MARGIOTTI: That's right.

THE COURT: Or testimony in the earlier hearing. Mr. Barrows, if you can find it, we will be glad to have it. That must have been some 10 minutes ago, it must be some 10 minutes back.

MR. MARGIOTTI: I can go to something else and we can take it up later.

THE COURT: All right.

Q. Isn't it a fact that the only person that ever said that Donald Johnson's name was mentioned—

MR. PRATT: Now, if the Court please—

MR. MARGIOTTI: Pardon me. I withdraw it.

THE COURT: Let Mr. Margiotti frame the question, Mr. Pratt.

MR. PRATT: I was going to suggest the importance of getting this correction in the record if there has been a mistake and having it at this rather than waiting until a later time.

(T. 506):

MR. MARGIOTTI: Well, my only interest is in the interest of time, that I want to go on.

MR. PRATT: I think Mr. Barrows will probably be able to find it in a very few seconds.

THE COURT: Do you want it now?

MR. PRATT: I would like to have it now.

THE COURT: All right, Mr. Barrows, see if you can find it.

(The reporter read as follows:

"Q. Isn't it a fact that you also testified before the Grand Jury at a time when you were supposed to be telling the truth that Donald Johnson's name was never mentioned?

"A. Well, if I did, it was only in connection with—. Well, I would like to say here that there is a little confusion over the mentioning of Donald Johnson's name in Mr. Knight's office on April the 8th, 1942, and there is two different angles to the mentioning of his name. First, it was developed by Mr. Fenner that Donald Johnson's name was mentioned in connection with the payment directly to him of the $3,000.

"Q. And where do you think that was developed?

"A. By Mr. Fenner's testimony.

"Q. By Mr. Fenner's testimony?

(T. 507)

"A. That's right, that's right, in this court. He said that Donald Johnson's name was first proposed, the check should be made payable to him. Now, I deny that and that is the question that I thought that you were propounding to me and I don't ever remember it was even asked of me, either here in the Grand Jury room, whether it was talked over in Mr. Knight's office about Donald Johnson being the ultimate receiver of this money, I don't think that question was ever asked of me until it was asked right here, and I say now that it was talked over and it was understood that that is where the money was to go to, but when you ask me the same question again, I say to it on the one hand 'yes' and on the other 'no.' There are two separate questions.

"Q. Are you through?

"A. Yes.")

A. I misspoke.

Q. Nobody is asking you a question.

THE COURT: No, no, now he has heard his answer. If he needs to correct it I will let the witness answer it correctly. The witness, like lawyers, sometimes makes mistakes.

MR. MARGIOTTI: And how.

THE COURT: And like Judges, too.

MR. MARGIOTTI: And how, we all do.

(T. 508)

THE WITNESS: I misspoke and used the name "Fenner" there, I think it was twice, in the place of

"Knight." I think it is twice.

Q. Then you meant in place of saying "Fenner," you meant "Knight"?

A. That's right.

Q. And as I understand, your testimony now is that although Knight says the name of Donald Johnson, among others was suggested as the person who should be the recipient or the payee of the check for $3,000, that you say never did occur?

A. I don't remember that his name was ever mentioned in conjunction as being the person to whom the check should be made payable.

Q. That is what I am asking you about.

A. That is what I am answering.

Q. You have testified to that right along, that you never recall that Donald be the man suggested to get the check?

A. Never any suggestion in that regard.

Q. Now, isn't it a fact that at that time there were several lawyers mentioned, several lawyers were mentioned as good intermediaries, go-betweens, to get the $3,000 and then turn it over to you?

A. Well, as a matter of fact—

Q. First answer the question.

THE COURT: Let him answer it.

MR. MARGIOTTI: All right.

A. As a matter of fact, that was finally ironed out in a

(T. 509)

meeting between Mr. Reifsnyder and Mr. Knight in Mr. Knight's home on that night.

Colloquy

Q. I have asked you one question.

MR. LEVY: One minute, please. I would like to get the answer.

MR. MARGIOTTI: He said, as a matter of fact, it happened in Mr. Knight's home one night between Reifsnyder and Knight.

THE WITNESS: That was the final conclusion of the plan.

MR. LEVY: One minute. I object to that testimony upon the same ground that I objected to the first testimony, namely, the conversation between Mr. Reifsnyder and Mr. Knight, not in the presence of this witness, is not admissible in this case.

THE COURT: You see, Mr. Levy, that only comes back to his direct testimony, as I recall it, that on the night in question they had spent the day of the night in question in conference, which was followed by a visit to Mr. Knight's home. Reifsnyder went in, Michael remained in the car. The testimony, as I recall it, and what occurred inside he knew only when Reifsnyder told him upon leaving Mr. Knight. Is that the same event you referred to in the last answer?

THE WITNESS: That's correct.

(T. 510)

THE COURT: I will overrule the objection, Mr. Levy, and you may have an exception.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U.S.D.J.)

THE COURT: Now, what Mr. Margiotti would like to know is whether or not, in addition to Mr. Fenner, there were at any stage of these proceedings the names of any other lawyers suggested who might be willing to act as intermediaries.

MR. MARGIOTTI: Not would be willing but would be approached to act. Who were approached, we'll say.

THE WITNESS: I don't remember any other name with the exception of George Fenner, Jr.

Q. George Fenner, Jr. Don't you remember your suggesting a name?

A. No, I don't.

Q. Do you remember Mr. Reifsnyder suggesting a name?

A. No, I can't be clear on that, I don't even know who suggested George Fenner, Sr.

Q. I see.

A. But I remember there was a general conversation.

Q. All right. Isn't it a fact that you made the statement that you had acted as trustee and were acting as trustee in the Edington Distillery case, Dan Jenkins was your

(T, 511)

attorney, that you were not getting very much out of that estate and you suggested that Dan Jenkins act as the intermediary?

A. No, I don't ever remember making such a suggestion.

Q. Did you make any suggestions about Dan Jenkins?

A. No, I don't ever remember his name being mentioned in connection with this.

Q. Well, do you remember making the suggestion that you had done a lot of work in the Edington case and were getting nothing out of it, or something like that?

A. Well, that wouldn't be a suggestion, that would be a statement.

Q. That would be a statement. And you had done a lot of work and didn't—and got little or no pay, as it was?

A. Well, that is a matter of record, yes.

Q. That is correct. And that you were anxious to get paid out of this receivership or trusteeship for the work that you had done in the other case that you hadn't been properly paid?

A. You mean I ever said that?

THE COURT: Yes, did you ever say that at any of these conferences?

THE WITNESS: No. You mean at the conferences that we are talking about down at Catawissa?

Q. That's right.

A. No.

Q. Did you ever tell Mr. Reifsnyder that would be a good way to get some money for the work you did in the Edington

(T. 312)

case and didn't get paid?

A. No, I never did.

Q. Did you ever tell Dan Jenkins?

A. No, not on that.

Q. Did you ever have it in mind that that would be a good reason for your getting the $3,000 and morally you would think you were right?

A. No, that's not true and has no connection.

Q. No connection. All right. Now, up until the time—you say you had that automobile talk with Reifsnyder on your way back from Harrisburg, I think it was February the 13th, 1942. Had you ever discussed with Donald Johnson the $3,000 was to be improperly taken out of the estate either for yourself or for him or for anybody else?

A. No, I hadn't discussed it.

Q. Had Mr. Reifsnyder, to your knowledge, ever discussed that up to that night or before that night?

A. Are you speaking of $3,000 or the conversation?

Q. I am talking about the $3,000.

A. Well, at that time there had been no sum set nor decided upon.

Q. Do you mean to say that there had not been any discussion?

A. No, I did not mean to say there had not.

Q. Or don't you know?

A. Well, I don't quite understand what your question is, whether it is a discussion or a discussion about $3,000.

Q. Well, I want to know whether or not there was a discussion about $3,000 to be improperly taken out of this estate

(T. 513):

for Donald Johnson at any time before the night of February the 13th. Now, that can be answered "Yes" or "No" to your knowledge.

A. And my answer is "No."

Q. Your answer is "No."

THE COURT: Now, let the Court follow with the next question, which is prompted by your apparent quandary with the first one which was propounded. Was there any discussion at any time prior to the date fixed by Mr. Margiotti in his question concerning any sum to be paid Donald Johnson, regardless of amount?

THE WITNESS: Prior to that night?

MR. MARGIOTTI: That's right.

THE COURT: Yes.

THE WITNESS: No.

Q. All right. Then that night, the first time you heard thing about it is when Donald Reifsnyder told you in ing back from Harrisburg, "Well, now, somehow or er we ought to take care of Donald Johnson," or words that effect?

A. That's right.

Q. And he informed you then that he had a conversation with Mr. Reifsnyder and that he thought he had plan—with Mr. Knight?

A. Well, he said he felt him out.

Q. Felt him out. And that Mr. Knight would go along?

A. That's right.

Q. Now, you were satisfied that that's what he said? 514):

A. That's right.

Q. In that conversation there was some doubt in Mr. ifsnyder's mind as to whether or not it was necessary do any thing like that for Donald Johnson, wasn't there?

A. No, I think you will find that I made that statement.

Q. Well, didn't he say, "Well, I suppose we have to talk about some way in which we have to take care of Donald Johnson"? Isn't that what Reifsnyder said?

A. Well, of course I can't remember his exact words, or anything like that; all I can testify to is by putting my understanding and my reactions into my own words, that's all.

Q. Well, of course you are supposed to give the substance of the conversation.

A. That is what I am attemping to do.

Q. You can't remember word for word what was said, nobody can do that; you are supposed to give the substance.

A. That's right.

Q. All right. Didn't you say to him, "What do mean, splitting fees?" And he said, "Well, I am not sure whether we have to do that or not"?

A. That's right.

Q. "I have in mind another plan which would create a fund, aside from moneys which would be paid over."

A. That's right.

Q. "Of course in the form of allowances by the Court."

MR. PRATT: If the Court please—

THE COURT: Wait a minute.

Q. Don't answer this until he objects.

(T. 515):

THE COURT: Are you finished with the question?

MR. MARGIOTTI: I am just about through. Isn't it a fact that he had in mind some form whereby some further allowances would be made by Court order?

A. Are you reading from the record there?

Q. No, I am asking you.

A. I don't remember that phase of it at all.

Q. You don't. Well, now, may I inform you that I am reading from your own testimony that you gave before this jury since you have taken the witness stand?

THE COURT: Now, wait a minute. You said whether or not he had in mind.

MR. MARGIOTTI: Whether he expressed it.

THE COURT: Well, now, that's different.

MR. MARGIOTTI: Of course.

THE COURT: Read from the record, if you say "I am reading from the record," read from it.

MR. MARGIOTTI: I will read from the record.

MR. PRATT: May I inquire the page number?

MR. MARGIOTTI: It is pages 258 and 259.

Q. You were asked this question by Mr. Pratt right here (indicating).

A. Not the question you asked, though.

THE COURT: Listen to the question, Mr. Margiotti is going to read it this time.

Q. "Will you state as best as you can remember the circumstances of that conversation?" (T. 516):

A. Well, the conversation had its beginning due to the fact, while we had been in conference with the Bondholders' Committee in Harrisburg they had signified their willingness to go along on the plan of merger and accept—and turn their bonds in. In other words, on our way back we had largely accomplished what we had set out to do and it looked like, at that time, that merger would go through. There was nothing at that time to stop it, and during this conversation Mr. Reifsnyder said, 'Well, I suppose we have to talk about some way in which we have to take care of Donald Johnson.' And I said, 'What do mean, splitting fees?' And he said, 'Well, I am not sure whether we have to do that or not. I have in mind another plan which would create a fund aside from the moneys which would be paid over, of course, in the form of allowances by the Court,' and he said, 'We could set up certain funds which would be paid over to a third party and then come back for disbursement to Mr. Johnson.'" Did you so testify here? "Yes" or "No."

A: I don't think so.

Q. What?

A. Well, there is one part of it, it is all clear to me but that one part there where you say under "allowances by the Court."

Q. Well, I am only reading from the record.

A. Could I read that particular part?

(T. 517):

Q. Yes, indeed, sure enough. It starts here (indicating).

A. What I am interested in is only one phrase there, "allowances by the Court."

Q. There it is.

A. Well, I don't ever remember giving this testimony in its form as transcribed here.

THE COURT: Well, if you did, is it in error? Is there an error in it?

THE WITNESS: Well, it is an error in this way, that the side money was never discussed as being to be paid over by Court allowance, it was understood, my understanding if was to be paid over without a Court allowance. Now, of course—

Q. You mean to say you don't remember making this statement here?

A. With that correction.

Q. That is wrong?

A. Yes.

Q. Well, of course we have a very good stenographer.

MR. PRATT: Well, the question Mr. Margiotti now asks is not fair.

THE COURT: He has answered.

MR. MARGIOTTI: He has answered, we all understand it, including yourself.

THE COURT: He said the answer is still the same with one exception, the allowance was not to be allowed by the Court, otherwise the testimony is identical with that just given.

(T. 518):

Suppose we take our noon adjournment and the witness may step down and leave the court room and the jurors may retire.

(The jury retired.)

THE COURT: Have you something, Mr. Levy?

MR. LEVY: Yes.

(At side bar:)

MR. LEVY: If your Honor please, this is probably as opportune a time as any. Under our pretrial conference and arrangement—

THE COURT: Mr. Margiotti better step up here too, this may be of interest to him, I don't know.

MR. LEVY: We now move the Court to strike out all the testimony of this witness concerning alleged declarations made by Reifsnyder to the deceased, to wit, not in the presence of the defendant Mr. Knight of what Mr. Knight is alleged to have told Mr. Reifsnyder, the decedent, not in the presence of the witness, namely, on the trip from Harrisburg February 13th, and at the home of Mr. Knight on the evening of April 8th, upon the grounds that the question concerns not the truth of Mr. Reifsnyder, the decedent's utterance, but its effect upon Mr. Knight's legal relation and obligation under this indictment and because there can be no measure of relationship between its admissibility and its trust-

(T. 519):

worthiness, and because this testimony can in no manner be examined by Mr. Knight. And upon the further grounds that the statement by Mr. Reifsnyder, the decedent, as to what Mr. Knight is alleged to have said is only a statement not in furtherance of the conspiracy, it is hearsay upon hearsay subject to no test of examination by the defendant Mr. Knight or for

his protection. These statements alleged to have been made by Mr. Knight to the decedent are a mere relation of something already done and is not competent against Mr. Knight.

I shall try to furnish the Court with the petitions upon which that thing is based.

THE COURT: Well, the objection is overruled because if the testimony is credible it clearly appears that these declarations or statements were made during the course of the conspiracy and in furtherance of it and there is credence to the statements by the fact, if it is a fact, that the plan as thus conceived and discussed between Reifsnyder and Michael was ultimately the plan carried out in Mr. Knight's office. In other words, the discussion itself, aside from Mr. Johnson's alleged participation in the conspiracy related to the method to be pursued in diverting the $3,000. The deliberations concerning it, likewise, if the testimony is credible, embody the plan ultimately carried out. I

(T. 520):

don't know how they can be construed as anything but statements made during the course of the conspiracy and in furtherance of it in so far as it relates to Mr. Knight's participation.

The objection is overruled and you may have an exception.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U.S.D.J.)

Noon Recess

(T. 521):

Afternoon Session

ROBERT MICHAEL resumed the stand.

Cross Examination (continued)

BY MR. MARGIOTTI:

Q. Mr. Michael, in your plan of reorganization there was a provision calling for 20% to the bondholders, paying 20% of the bonds, and 5% to the unsecured creditors, is that right?

A. That's right, yes.

Q. When was that plan first approved by you and Mr. Knight and others? I mean, when did you finally come to the conclusion to present that plan to the court?

A. I think that was—

Q. Pardon me, to the interested parties.

A. Well, now, what do mean by that? You mean formally present it to them or go to them and feel them out?

Q. No, first of all when did you conclude that that was the plan that you were going to present to the interested parties? By "interested parties" I mean the bondholders and unsecured creditors.

A. What do you mean, formally present it to them or just go to them and talk to them?

Q. Go to them to talk to them.

A. Well, that was shortly after we received proposal from Harry Knight. Now, that was made up, dated January 27, 28, mailed the 29th, received probably the 30th, and shortly thereafter we started to make contacts.

Q. Well, as I understand, you came to a conclusion about
(T. 322):
the first of February, around there some time, to see if that plan was satisfactory.

A. Well, that wasn't for us to say.

Q. I understand. In your own mind.

A. Whether it was satisfactory, we went to them to see if it was satisfactory to them.

Q. I understand that.

THE COURT: In other words, as I understand it, when this proposal was made some informal negotiations were carried on with bondholders, stockholders, creditors and the like to ascertain whether or not the proposal was satisfactory as distinguished from the plan as ultimately drafted and filed.

THE WITNESS: Yes, that's right.

Q. That was in the early part of January, is that right? Am I right?

A. No, it would be the latter part of January, it would have to be after the 30th of January.

Q. I said the early part of January.

THE COURT: You said January.

MR. MARGIOTTI: I beg your pardon; I meant February.

Q. The early part of February?

A. That's right.

Q. Then you submitted the plan to the bondholders and to the unsecured creditors, the people that were effected, the people that were to get the money out of the estate.

A. That's right.

(T. 523):

Q. Whatever was left. And who did you submit that plan to? The unsecured creditors or the bondholders?

MR. PRATT: I object to it. I don't believe this is relevant to the present inquiry at all.

THE COURT: It doesn't appear to be relevant, but I will let him answer it.

A. Oh, I couldn't say definitely which one we talked to first.

Q. Well, you have already testified that on February 13th you discussed it with a Mr. Wickersham of Harrisburg, attorney for the bondholders.

A. That's correct.

Q. Had you discussed the same plan with Hervey—is that Hervey or Herbie?

A. We always called him Hervey.

Q. All right. (Continuing) Hervey Smith, attorney for the unsecured creditors?

A. Yes, we had discussed it with him.

Q. Before the 13th?

A. Yes, I would imagine so. It must be.

Q. I see. And it was after you had received their assent to the plan that this discussion occurred on February 13th, coming back in the automobile.

A. Well, let me, if I can; answer it this way: that after they had inferred that they were going to consent. We had no formal consent.

Q. Now you believed they were going to consent?

A. That's right.

Q. Now when did they finally consent, the bondholders
(T. 524):
and the unsecured creditors, to the plan?

A. Well, we submitted to the court on the 27th day of February the plan. And, that plan, of course, provided, and with the plan was sent out, cards for the purpose of voting. Now, when there was enough actually voted and arrived I couldn't tell. Eventually enough arrived.

Q. All right. Now, this plan also called, first, for the payment of the expenses, attorney fees and fees for the attorneys to the petitioning creditors, in addition to the sums which you have mentioned in your examination in chief.

A. That's right.

Q. Now, what I would like to know is this: You say that that $3,000 that you and Reifsnyder got came from the estate. Now, if that $3,000 had been actually paid into the estate—do you follow it?

A. Yes, I am following you.

Q. Where would that $3,000 have gone to under your plan?

MR. PRATT: I object to that, if the court please. Obviously it would only have gone to the funds which the court distributed.

THE COURT: The trouble with the question is the form, where it would have gone. There was this about it: the money belonged in a definite place, if it was the money of this estate.

MR. MARGIOTTI: What I am driving at, Judge, is this, I don't know whether I am right or wrong: Here

(T. 525):

the Maxi Company, paying $3,000 more than they were required to pay—

THE COURT: No, I don't believe that is so.

MR. MARGIOTTI: Oh, yes they did.

THE COURT: That is not the contention, that is not even Mr. Levy's contention.

MR. MARGIOTTI: All right, let's say—

MR. LEVY: It is our contention it was extra money.

THE COURT: Extra money?

MR. LEVY: Yes, extra money. We have never changed from that contention, if the court please.

THE COURT: Pardon me.

MR. MARGIOTTI: I am gathering this, this I don't know, here is my thought; if the Maxi Company were paying $3,000 and they knew what this $3,000 was for and they were satisfied that it should go the way it did actually go and eventually because of the agreement between the parties, this $3,000, if it had been paid, would have gone back to Maxi and since Maxi is not complaining as a party of the whole thing then there was nobody to defraud. I don't know if that is true or not, I am trying to find out.

MR. PRATT: I objected to that statement because it isn't in accord with the evidence at all.

THE COURT: Not as the evidence is thus produced.

(T. 526):

I must admit it is an ingenius—

MR. MARGIOTTI: But he is on cross-examination.

THE COURT: Yes, I understand. You say where would it have gone.

Q. Well, under the agreement, let's assume now that $3,000 more had been paid into the estate, in other words this $3,000 that you and Reifsnyder got had been paid into you as trustee, under your plan of distribution who would be entitled to that $3,000.

MR. PRATT: Now, I object to that, it was a matter for the District Court to distribute that by proper order.

MR. MARGIOTTI: No, if your honor please—

MR. PRATT: It couldn't have been otherwise.

MR. MARGIOTTI: What I was driving at is this: If the bondholders agreed to 20% and the unsecured creditors agreed to 5% and the Maxi Company was to pay the expenses of the administration, if they paid $3,000 extra they were buying all the assets, this $3,000 would go back to them anyhow because the bondholders—

MR. PRATT: Why, no.

THE COURT: That is not the evidence thus far.

MR. MARGIOTTI: I am trying to find out if it is correct, I don't know, I am not saying; the witness is on the stand and I am asking him.

Colloquy

THE COURT: Well, you and I have listened to the

(T. 527):

same testimony and the testimony as I summarize—and I don't like to summarize testimony because sometimes the jurors are influenced by the court's summary, but as I understand the testimony—let me, to instruct the jurors, say that you are not bound by my understanding of it, if your recollection of it is different—simply this: that there was a price which Maxi Manufacturing Company was to pay—

MR. MARGIOTTI: $26,000.

THE COURT: —for the assets of the Central Forging Company. That, despite this plan or scheme, whatever it was, the price never changed, they still paid it out. The method of payment was so altered that $3,000 did not find its way into the estate although the estate parted with the same assets it had agreed to part with originally. Now, that's my understanding of the testimony at the moment.

MR. MARGIOTTI: Judge, that is the testimony up to the present time.

THE COURT: Yes.

MR. MARGIOTTI: I agree with everything you said, but what I am trying to find out is this: suppose the $3,000, that money had actually gone into the estate, where would it have gone under their plan of distribu-

(T. 528):

tion.

THE COURT: Are you asking me?

Colloquy

MR. MARGIOTTI: Asking him.

THE COURT: If you were to ask me as the judge—

MR. MARGIOTTI: No, I am not asking you as the judge.

THE COURT: I would distribute it among the the creditors.

MR. MARGIOTTI: Well, that depends upon whether it was before the plan of distribution had taken place. If they had adopted—here is my thought, that if the bondholders and the unsecured creditors agreed to take so much, then afterwards came this idea of this extra $3,000 to be paid, while he would have some duty to perform as an arm of the court to inform the court and so on, if under the plan that $3,000 had gone back because part of the assets of the Maxi Company, and the Maxi Company participated in paying it, they themselves paid it, and they are not complaining, then nobody was cheated. That's the story.

MR. LEVY: If your honor please, I just want—if your honor please, between the colloquy between counsel and the court, I don't want Mr. Knight's position to be assumed in this case.

THE COURT: Yes, that's what I am fearful of, (T. 529)
too, Mr Levy; Mr. Margiotti also assumed a fact which is not in evidence at this stage.

MR. LEVY: But I don't want to be bound by the court's summarization of what the testimony is so

far because I think a little later we will explain our position and the court will hear that.

THE COURT: Yes, I understand, that is the reason I instructed the jurors that it was with reluctance that I summarized my understanding of the testimony, and the jurors are not bound by my summary at all, I am telling that now and at the proper place in the charge I will tell them again, the jurors are not bound by any summary of evidence, they are not bound by any comment on evidence that I made. All right, let's go on Mr. Margiotti.

Q. Well, was there a question?

THE COURT: Let Mr. Margiotti have what was on the record.

MR. MARGIOTTI: I will ask a new question, it will save time.

THE COURT: All right.

Q. Mr. Michael, under your reorganization plan, whatever was left of it — whatever assets the Central Forging Company had were to go to the Maxi Company, were they not?

A. That's correct, yes. (T. 530)

Q. And as far as paying 20% to the bondholders was concerned and 5% to the unsecured creditors, they got their money in full, didn't they, the 20% and the 5%.

A. That's right.

Q. Now, did this plan of taking the $3000 occur before or after the agreement was made by the bondholders or the unsecured creditors to take the 20 and—take their respective shares?

A. That occurred after.

Q. Afterwards. Therefore if the $3000 had actually been paid by the Maxi Company—in other words, if you had $3000—more than—what was it $23,000, something like you got—you would have got $26,000?

A. $22,982 is what we got.

Q. We are using round figures for convenience.

A. Yes.

Q. If they had paid $26,000 into the estate—

THE COURT: But they didn't.

MR. MARGIOTTI: Pardon me, your honor, may I finish my question?

THE COURT: No, because he is disagreeing with you to start out with so your premise is wrong.

MR. MARGIOTTI: Well, may I ask the question?

THE COURT: All right, go ahead.

Q. If they had paid $26,000 into the estate in place of
(T. 531)
$23,000, whatever cash was left after paying your 20% and 5% would have gone back to the Maxi Company, is that right or wrong?

A. No, that is wrong, and I think if you will give me a moment I can straighten the thing out.

MR. PRATT: I object.

THE COURT: All right, let him straighten the thing out.

A. What you are going on is this proposition: that the Maxi Manufacturing Company had agreed to pay all of the distribution, or all the costs of administration. Well, that's not the way the agreement was, the agreement was that they were to pay a certain amount which we finally agreed upon to be the sum of $26,404 and some odd cents.

Q. I see.

A. Now, they were bound to pay that regardless of what this court or what the district court, which had jurisdiction, would have allotted in fees, and if the court allotted more fees, they were still not responsible and if you will read over the final agreement you will find that this is exactly the way it was drawn up, that no matter how much it was or how little it was it came under the court to distribute.

MR. LEVY: If your honor please, I now desire to object to that testimony and ask that it be stricken out as contrary to the plan that was filed in the court and confirmed by the court.

THE COURT: Well, Mr. Levy, the whole plan, if what

(T. 532)

Mr. Michael says is true, and here again I am not passing upon the credibility of his testimony, if what he says is true in his testimony the whole thing was beyond the plan. We are not confined to the plan here, this case is being tried, if I appraise the testimony prop-

erly, only because that which was done was done allegedly illegally. If it were legal we wouldn't be here. Now, that's the situation, not that it was beyond the plan, the government's contention is that it was beyond the plan and filed with the court, but it is in that very thing that the estate was defrauded and the court may or may not have been deceived, I don't know.

Q. Now, Mr. Michael, you agreed to the plan?

A. I submitted it and signed it and I agreed.

Q. Please answer the question: the question is, you agreed to the plan?

A. Yes, I agreed.

Q. And you knew it was wrong?

A. That's right.

Q. By the way, did you swear to the report that was made to the court? Did you swear that time too?

A. I imagine so.

Q. It is under affidavit.

A. If it required—

MR. PRATT: The report is the best evidence.

MR. MARGIOTTI: He is always objecting. If I were to object every time a little matter of that kind came up we would never get through.

(T. 533)

THE COURT: Was the report ever verified, as you recall it?

THE WITNESS: I think it was.

THE COURT: You think it was, all right.

Q. Now, when you testified before the grand jury previous to your plea of guilty on making that false report—

MR. LEVY: One minute, please. If your honor please, let's not get into this. I haven't looked at it, but I know the plan of reorganization doesn't have to be under oath and this it not under oath so we don't want to get—

MR. MARGIOTTI: The record speaks for itself, let's leave it that way.

THE COURT: All right.

Q. When you testified before the grand jury you denied that there ever was such a plan to cheat and defraud the estate of $3000, is that right?

A. You are speaking of my testimony when?

Q. Before you pleaded guilty.

A. Yes.

Q. Yes sir. At that time—by the way, was Don Johnson ever present at any of these meetings with any of these defendants that are here at this table at Sunbury or Catawissa or Wilkes-Barre or any other place with you?

A. Not with me, no.

Q. Well, at meetings that you had at these various places,

(T. 534)

Don Johnson was not there, was he?

A. No.

Q. Now, in this grand jury, without reading all your testimony—we would be here until after election day and

we don't want to do that—you also testified that there was no $3000 in cash paid at the Catawissa bank.

A. You're still referring to my original—

Q. I am referring before your plea of guilty.

A. Yes, that's right.

Q. That's correct. And that before the grand jury at that same time you testified, first, that you did not pay—no, strike that. You testified that you paid Hervey Smith $500 in cash.

A. That's right.

Q. And that the $500 in cash that you paid him you paid him after the meeting of the 24th of April, that you stuck it in your pocket here in Scranton and found your way down to Bloomsburg and paid him in cash $500, is that right.

A. That's correct.

Q. Of course that wasn't true according to what you say.

A. What's that?

Q. You paid $500, that is Reifsnyder paid $500 but you never carried $500 in cash from here to Bloomsburg to pay Mr. Smith.

A. That's right; I did not.

Q. O. K. And you interview Hervey Smith prior to the time you paid him $500.

A. Yes, I had talked with Hervey.

(T: 535):

Smith.

Q. Is it not a fact that while you were trying to work out this plan that you went to Hervey Smith and offered him a bribe of $500 provided he would induce his clients,

who were the Beckleys and the unsecured creditors, to agree to accept 5% of their claims?

A. No, that is not true.

Q. And is it not a fact that Hervey Smith, the attorney, said to you and to Mr. Reifsnyder, "I do not do business that way. I will, however, submit your plan to my clients and if they agree to accept 5% and permit me to take $500 for my fees I will take the $500, but it is going to be with my client's consent, otherwise I won't touch the proposition"?

A. No, Heryey never said that at that time.

Q. In substance, maybe not in those exact words. I mean in substance.

A. No, you can't reasonably say that that is what he said.

Q. You can't reasonably say?

A. No.

Q. Well, can you say it in any other way if you don't want to use the adverb reasonably?

A. Well, I could give you the idea behind the $500 and what led up to it and the entire background, and it was never at any time considered a bribe, we never entered into it with that in mind at all, it was strictly something that—

Q Well, why were you going to pay him $500. Strike (T. 536):

that. Where was that $500 going to come from when you went to him and made him the proposition?

A. The first time, the time it was brought up Mr. Reifsnyder said—of course if you go back a little bit, one of the first men that we interviewed in regards to this thing was Mr. Hervey Smith, who was an attorney at Bloomsburg,

and we went to him because he was a boyhood friend and an associate, in a sense, of Mr. Reifsnyder, and he wanted to find out some of the background, some of the local things there, because he knew Mr. Smith was an attorney for the Beckley interest, and his father had been ahead of him, and we talked a considerable time with Mr. Smith. He was a big help as far as giving us the background of this entire Central Forging and Maxi Manufacturing Company and also of the principals who were involved in it. And he also told about the amount of money that was owed to them and how much work he and his father had done and so on; and I was not present with Mr. Reifsnyder at the time that he went in to see Hervey at which he offered Mr. Smith, as he informed me—I knew what he was going for and I know that is what he said he had done afterwards, that if he got a reasonable fee that he would be willing to give Hervey some part of it. It wasn't fixed at $500. And I told him that—and the reason that he wanted to do that was because the 5% of the amount of the unsecured claim of the Beckleys would amount to less, to such a small sum that Mr. Smith could not collect or at-

(T. 537):

tempt to collect a fee large enough for the work that he and his father had done.

Q. Well, that distribution had amounted to about $1,700 to those unsecured creditors, didn't it?

A. It was somewheres along in there.

Q. All right. Now, the unsecured creditors got $1,700 and this lawyer got $500 out of your fees.

A. That's right.

Q. And out of your fees you gave—you split your fees with him for work that he and his father both had done and

were doing in connection with the creditors accepting the 5%.

A. Well, you can put it that way if you wish, you could put it the way we could say we paid him $500, for work that he had done for us.

Q. And that was your only interest in taking $500 out of the pot, as you called it the other day, or somebody called it a pot, and give to Hervey Smith.

A. Yes, that's right, substantially.

Q. All right. Now, at the time this $500 was paid Mr. Fenner and Mr. Reifsnyder and yourself appeared in an automobile at the golf club, is that right?

A. We went there, yes.

Q. Donald Johnson wasn't there, was he?

A. No.

Q. Now, you had your plan for closing, as you called it, which occurred on April 24, 1942 in Mr. Knight's office.

A. That's right.

(T. 538):

Q. Mr. Johnson was not there, was he?

A. No.

Q. And then you did go to that bank where the $3000 was put on the end of a table, it was wrapped up with bank wrappers in six packages, as I understand the testimony; that did happen?

A. I have so testified, and it did.

Q. And of course Mr. Johnson was not there.

A. Oh, no.

MR. PRATT: If the court please, characterizing the packages as fancy packages—

MR. MARGIOTTI: I didn't say that they were fancy; I said they were wrapped with bank wrappers.

MR. PRATT: I thought you said fancy.

THE COURT: Maybe they weren't so fancy, but if there was $500 in them I think they were fancy.

MR. MARGIOTTI: And fancy enough if there was $500 in each one of them, don't you think I wouldn't care whether they were wrapped up.

THE COURT: All right, let's go on.

Q. And, Mr. Michael, on account of your trip to Scranton what time did you leave Bloomsburg?

A. Well, of course it would be summary. We left the bank at sometime around four o'clock.

Q. I didn't ask you what time you left the bank, figure it out in your own mind and tell us.

A. I would say four-thirty, quarter to five.

Q. And then you drove to Wilkes-Barre?

A. That's right.

(T. 539):

Q. How many miles is that?

A. I don't know, I guess around 50.

Q. And you left Mr. Fenner at his home, as I recall the testimony.

A. That's right.

Q. And about what time would you say you left Wilkes-Barre?

A. It was getting dark when we left there.

Q. About what time would you say it was.

A. Well, let's see, I would imagine it was around 7 o'clock or 7:30, if it gets dark at that time.

Q. Well, keep in mind that was April 24th and we probably had Eastern War Time on at that time, I don't

know. It was after Pearl Harbor. Well, it was getting dark no matter what happened.

A. The only way I can definitely establish time, I know we got to the bank in Catawissa after it had closed, I know it was getting dark when we got to Wilkes-Barre. Now, then, you can fill in between there.

Q. Let's stop right there. And about an hour later you got to Scranton, it was dark when you got to Wilkes-Barre and you got to Scranton an hour later according to your testimony here.

A. I said approximately an hour, yes.

Q. You drove slowly?

A. That's right.

Q. All right. Now, was it completely dark by the time you got to Scranton?

A. Yes, it would be.

Q. Yes. Now we are going to those two yellow sheets that were introduced here in evidence and concerning which (T. 540):

I asked you a few questions the other day. Do you know what became of those sheets or sheet, or whatever it was, that Mr. Reifsnyder was writing on on this automobile trip that occurred at the time that you had mentioned?

A. No, I do not unless those are the sheets there.

Q. Unless they are. You got to Scranton and did you go into his home?

A. I did.

Q. How long did you stay there?

A. Well, I would say 15 or 20 minutes.

Q. What did you do during that time?

A. We had a drink, a Martini.

Q. I don't care what kind. Did you discuss the case or discuss your trip during those 15 or 20 minutes?

A. I don't think so, no. We had pretty well discussed it before that.

Q. I didn't ask you that question. I asked you whether you discussed it then.

A. I would say no.

Q. All right. Was Mrs. Reifsnyder present.

A. She was.

Q. Now, you have testified that you had charge, together with Mr. Reifsnyder, of this file that has been marked Government's exhibit number 8—I think that is an 8, isn't it?—and the inside is marked 8-A.

A. Yes.

Q. And you call this a joint file?

A. I do.

Q. In other words, it was as much yours as it was Reifsnyder's except it was in Mr. Reifsnyder's office.

A. That
(T. 541):
is correct.

Q. And kept in his filing cabinet. How many times did you go into this file after the 24th day of April, 1942, prior to the time that a representative of the Government, I think it was Mr. Weber, got the file in July of 1944? Am I right on my date?

(Mr. Weber nodded affirmatively.)

Q. July '44.

A. Now you asked me how many times I went into the file?

Q. Yes. How many times did you have the file in your own possession?

A. Personally? Never once.

Q. Well, did you look at it?

A. Only when Mr. Reifsnyder would be there.

Q. All right. Well, you had it out several times in connection with your business.

A. That's right, whenever we would have a conference in regard to anything why it would be necessary to refer to those papers.

Q. And within the dates that I have mentioned, about how many times was this file out?

A. Are you saying April 24th, up to the time they started it?

Q. Up to the time Mr. Weber got it.

A. I can never remember that it was opened in my presence during that time.

Q. Were you ever in it?

A. No, with the possible exception that in preparing our financial account I was prob-

(T. 542):

ably there and signed it. The file was probably opened.

Q. Well, you never saw—pardon me, sir, go ahead. I beg your pardon.

A. I never had direct control over it, direct possession of it. I never had any occasion to have direct possession of it. I could have gone there, I presume, and told Don that I wanted to take the file, he wouldn't have objected, but there was no point.

Q. Well, at any rate, you never saw Government's exhibit G-8-C and G-8-B until they were shown to you at

the Grand Jury room by Mr. Goldschein, am I right or wrong on that?

A. Well, I can't answer the question yes or no.

Q. To your knowledge.

A. I can't even answer that. I have to establish, first, as I testified before in cross-examination last Friday, that there were a set of figures prepared between Don Reifsnyder and I in the car from Wilkes-Barre to Scranton.

Q. I understand that.

A. Now, those figures are the same figures that are on those sheets. Those sheets can't or cannot be the sheets that he prepared that night.

Q. That's right.

A. But those sheets were never in my possession therefore I can't testify that they are the same sheets.

Q. That's right. Now, then, from the night of April 24th until they were shown to you before the Grand Jury, after you had left Don Reifsnyder at his home after you had (T. 543):

the Martini cocktail that you were talking about, these sheets were never brought to your attention either directly or indirectly that you know of?

A. That's right.

Q. All right. They were never brought to your attention by Mr. Goldschein before the Grand Jury. Now we are talking before you pleaded guilty and you denied ever having seen them before or ever knowing anything about them in substance.

A. The first time before the Grand Jury.

Q. Yes.

A. Yes.

Q. That's right. Now, you testified that Mr. Reifsnyder was writing with a pencil and you say it was dark, getting dark, dark when you got to Scranton. Can you explain to me how the writing in ink, three sets of figures on one and an addition and two sets of figures on another—this is on Government's exhibit G-8-B—got on to this paper, if you know anything about it.

A. I don't know anything about it.

Q. Did you see that night in the dark or in the daylight or moonlight, whenever it was, Don Reifsnyder not only use a pen but to pick a fountain pen out of his pocket and use it.

A. If he did I don't remember it. I couldn't say.

Q. You didn't give him a fountain pen?

A. No.

THE COURT: May I see those sheets, Mr. Margiotti?

MR. MARGIOTTI: Yes.

(Exhibits G-8-B and G-8-C were handed to the Court.)

Q. Now, Mr. Michael, on the evening in question, on this

(T. 544):

trip between Wilkes-Barre and Scranton on April 24th, 1942, did you observe whether or not Mr. Reifsnyder did any erasing as he was putting down figures?

A. No, I couldn't say that I did.

Q. I want you to look at Government exhibit G-8-B and tell me if you know, have any knowledge of how this erasure took place (indicating). It is apparent on the paper.

A. No, I have already said I didn't.

Q. O.K. Now, I show you Government exhibit G-8-C—

MR. PRATT: That is the one you were talking about before?

MR. MARGIOTTI: No, the other one is B; they both have erasures on them.

MR. PRATT: What is the exhibit number of the one you have handed him now.

THE WITNESS: G-8-C.

MR. MARGIOTTI: G-8-C.

MR. PRATT: C?

MR. MARGIOTTI: C for Charles or for Chicago.

A. Well, I don't know if that is an erasure or not.

Q. Right there.

A. Oh, yes, yes, I see there is an erasure there, but that's all I know about it.

Q. In other words your answer to that exhibit is the same as it was to the other one?

A. That's right.

(T. 545):

Q. Now—

MR. PRATT: Pardon me. Will you point out those erasures to me, please, if the court please?

(Mr. Margiotti indicated erasures previously referred to to Mr. Pratt).

Q. The amount of the check which you got for yourself as trustee, was $8,420.05.

MR. PRATT: I object to that, that is not the fact.

A. As an individual.

MR. MARGIOTTI: Pardon me. You got that?

Q. I am going to develop what it was for.

MR. PRATT: It was not as trustee, he received that personally.

Q. As trustee, for yourself and Mr. Reifsnyder, and some expenses?

A. That's right, $8420.05.

Q. Now, of that sum you received, you were getting $3950 each.

A. That's right.

Q. You and Mr. Reifsnyder and your fees, is that right?

A. That's right.

Q. Now, you had some expenses of $411, hadn't you?

A. Well, I don't know, let's see. I don't know how that figure—it was $520.05 expenses and there was $50.90 printing bill, you take this off the $520 and divide the rest by half. Now, you might be able to add a lot of figures together and get $411 and it might be significant, I don't (T. 546):
know.

Q. Just a minute.

A. Yes, sir.

Q. You received in addition to the $7900 fees $520.05 to cover expenses?

A. That's right.

Q. That's the amount that you got out of the estate?

A. Yes.

Q. And that $520 was going to take care of your expenses and reimburse you for what you had paid out for something or other, is that right?

A. That's right.

Q. What is the $58.15?

A. 58.15?

Q. Yes. Do you know anything about $58.15?

A. I think that is the amount of the combined telephone calls.

Q. I notice in your own statement that you made here, and the Government has marked it G-11-B, the $58.15 is not reflected, I don't think. If it is, show me where it is. Do you remember when you wrote it out here? This is a photostat of it.

THE COURT: Where did you get the figure?

MR. MARGIOTTI: I got it from the other exhibit, judge.

A. Well, that is where I got it from, then.

Q. You don't have it in there, then, do you?

A. No.

Q. I see. All right. In other words, in the Reifsnyder representation he had $58.15 in telephone calls, or did you have that?

A. I think that was a combination

(T. 547):

of both. The best record would be our expense account as requested by the court. If you have that, that would be definite.

Q. Did you have that expense account?

A. No, I don't but I imagine there is a copy of it in that file.

Q. And the expense account you filed in court, did it cover this $520.05.

A. What's that?

Q. $520.05.

A. Yes, that's the amount as I remember. That is the amount we filed and we were allowed expenses in full.

Q. You mean in your petition?

A. Yes.

Q. Your petition for the fixing of counsel fees and trustee fees.

A. I imagine that would be the proper place for it.

Q. Very well. Just a minute.

THE COURT: It might well be in the accompanying affidavit, Mr. Margiotti.

MR. MARGIOTTI: Yes, I know, Judge.

MR. PRATT: I don't think that is in any of the papers that the government offered in evidence.

MR. MARGIOTTI: Well do you have it?

THE COURT: We will take a short recess and let Mr. Margiotti look at it.

The witness may step down and the jurors may retire.

(T. 548):

MR. MARGIOTTI: Mark this, please. We are marking a paper for identification only, your honor.

THE COURT: All right, let it be marked D (J)3 for identification.

(Exhibit number D(J)3 marked for identification.)

MR. LEVY: This is part of the original file.

THE COURT: I know, but you see, Mr. Pratt has offered those parts which he wants to rely, now you are not going to compel him to offer others, now they are here and available and Mr. Margiotti wants this marked for identification as at least a prospective exhibit of his client's.

MR. MARGIOTTI: Right.

THE COURT: And he may have it so marked.

BY MR. MARGIOTTI:

Q. The government has handed to me—they did, in fact the other day—this is not in evidence yet, a paper, "Trustee's request for allowances and accounting of disbursements". It is marked for identification Defendant's exhibit D-J(3). And now I want you to look at that photostat and see whether or not you recognize it. Look it over, please.

A. (After examining it) Yes, I think this is.

Q. This is the what?

A. That is the request for allowance for expenses.

Q. All right. And does this statement contain a list (T. 549):
of your expenses up to the time that it was filed, which I understand was April 16th, 1942?

A. Yes, that's right.

Q. And it contains an itemized list of the trustee's expenses as well as the services rendered by your attorney, Mr. Reifsnyder, giving dates of various trips, etc.

A. That's right.

Q. Now, using this paper to refresh your recollection, what were your expenses, the total? I don't care to have them itemized.

A. $1156.55.

Q. And that was broken down in two sets of figures, the first set as to the "following monies advanced to him and request allowances," that you had paid these amounts to $697.40? And then you asked "Allowances for mileage and telephone calls," and you have "Traveling expenses of trustee and his attorney $511" and "Telephone calls $58.15." Now, that gets those figures?

A. That's right.

Q. These expenses were allowed?

A. That's right.

Q. All right. Now, does this check of $8,420 reflect the full payment of those expenses?

A. No, it doesn't.

Q. That is what I want to know.

A. No.

Q. What portion of those expenses does the check reflect?

A. Well, specifically it reflects the traveling expenses, the trustee and his attorneys.

MR. PRATT: Give the items as you go along.

MR. MARGIOTTI: I will do that.

(T. 550):

"A. And telephone calls.

Q. Now, following Mr. Pratt's suggestion, give those items and I won't have to ask you.

A. Traveling expenses of the trustee and his attorney, $511, telephone calls $68.15. Now, then, there is—

Q. Before you go to anything else, pardon the interruption, Mr. Michael. Now those items that you have just given are the second set of figures under the trustee's

request of allowances for mileage and telephone calls as set forth in D-10, schedule 1, heretofore annexed?

A. Yes.

Q. And then you give it just as you have recited it. Now go ahead.

A. You want me to make up the $529, is that right?

Q. I am trying to find out just what expenses, if any, are reflected in your check that was given to you individually for your fees, Mr. Reifsnyder's fees, and your expenses, anything that is reflected in that check.

A. I would have to have a pencil and paper.

THE COURT: Where is the printing bill of which you spoke?

THE WITNESS: It is up in here (indicating).

THE COURT: In other words, as I understand your question, you want to see what items go into the total sum of the check in question?

MR. MARGIOTTI: That's right, Judge.

(T. 551):

THE COURT: And the total of the check is how much?

THE WITNESS: It is $520.05.

MR. LEVY: $8420.05.

MR. MARGIOTTI: That's correct, $8420.05.

THE COURT: As I understand that, $3950 is the fee allowed to the trustee, $3950 is the fee allowed to counsel for the trustee—

MR. MARGIOTTI: That's right.

THE COURT: (Continuing) That makes $7900 and the balance you want him to figure out for you?

MR. MARGIOTTI: That's correct.

THE COURT: All right.

A. Well, there is traveling expenses of trustee and his attorney of $411, telephone calls $58.15; then you might group it under printing, it covers Evans Printing Company, notices of, $7.25—

Q. Pardon me Mr. Michael. Would you take the Judge's blue pencil and just check off the items, it will make it a whole lot easier than making notes.

A. In a blue pencil?

Q. I don't care which you use.

A. I have either color here.

Q. You can use either one, whichever you prefer.

A. Do you want me to read?

Q. Have you got all the items checked?

THE COURT: Last we had some printing of $7.25, (T. 552):

go on from there.

A. There is a printing bill to the Evans Printing Company, notices of revised plan, $7.25, W. H. Mitchell Clerk, mailing notices of the revised plan, $7.15. Then there is the Evans Printing Company, revised plan, Court order ballots, $36.50.

(T. 553):

Q. What is that total?

A. The combined total, $520.05.

Q. All right. Now let me see that, please.

A. Do you want the yellow sheet?

Q. No, you keep it. So that, as I understand this $8,420.05, then, you had $411 and the $58.15 which is to be divided equally between you and the trustee's attorney?

A. That's right, Reifsnyder.

Q. I see. And in those figures, while that was the way that you were to divide it so far as the Court was concerned, was it actually divided that way or did you have some discrepancy, one cent more than the other and you finally had to make some settlement among yourselves?

A. You are speaking now of the $459.15?

Q. That's right.

A. That was divided equally.

Q. All right. Now, then, of the other $697.40, the Evans Printing Company and Mitchell, the clerk, for mailing the notices, and the Evans Printing Company for the ballots, was that money paid by you or Mr. Reifsnyder or was that to be paid out of this $8,420?

A. You are referring to these three items?

Q. I am referring to these three items.

A. Yes, that was in the $8,420.

Q. You mean that you had yourself paid that?

A. No, Mr. Reifsnyder had paid it.

Q. Oh. So that the $36.50 and the $7.15 and the $7.25 (T. 554): belonged in whole to Mr. Reifsnyder?

A. That's correct.

Q. Now, then, you have these other items, the differences between these three items and the $697.40. Had any of those items been paid by you or Mr. Reifsnyder?

A. That's not clear to me. I don't remember how they were paid. Maybe there was a separate check that I paid that out, I don't know.

Q. Now, let's see, that is $697.40. What did you say those figures were?

A. $50.90—

MR. PRATT: That would come out of the other check, would it not?

THE WITNESS: That's right.

MR. MARGIOTTI: If you can help me out on this I will appreciate any help you can give me because I am trying to develop it.

THE WITNESS: Well, the first check of—

Q. Now, Mr. Michael, so that we get this, I am confining myself, of course, to this check, to the $8,400, see?

A. Yes.

MR. PRATT: I have a suggestion, maybe it will help you.

MR. MARGIOTTI: All right.

MR. PRATT: There is an item of $225 to Unangst, that was paid to him direct.

MR. MARGIOTTI: I saw that and I was going to ask him about that.

(T. 555):

Q. Now, you filed, then, an expense account of $1166.55, and you actually got $646.50 less than what you had filed, although it was allowed, so far as your testimony goes now, and then I am going to clear up this $225.

A. That's correct.

Q. All right. Now, the first item here is "Expense of escrow agreement, $225." That's already in evidence, that went separately.

A. That's right.

Q. So we can take that off. That leaves $421.50 that's not covered in your expenses. Now, can you explain that?

A. That sum now—

Q. (Continuing): Because if you can explain it I would like to have you explain it. That amount becomes significant, $421 I believe is the exact amount of the money that was advanced by the Maxi Company and which was taken off of the $26,404 and-some-odd cents.

Q. And do you mean, then, Mr. Michael, that the Maxi Company, itself, had advanced all these other items, or did pay these other items and, therefore, you weren't to collect them, is that what you mean?

A. Yes, to the sum of $421.50.

THE COURT: Does it mean the items that you have enumerated in your oral testimony?

MR. MARGIOTTI: No.

THE WITNESS: No.

(T. 556):

THE COURT: As I understand your testimony, so we get it clear, in addition to the sum paid you actually in cash there was allowed to the Maxi Manufacturing Company a credit of $421 and-some-odd cents?

MR. MARGIOTTI: He said 50 cents.

THE WITNESS: Yes, I think that is correct.

MR. MARGIOTTI: That's right.

THE COURT: And that credit was for moneys advanced by Maxi Manufacturing Company during the months or weeks in which they operated the business,

or Mr. Davis, we'll say, and Mr. Long operated the business?

THE WITNESS: No, that's not quite true, that expense was created and paid before I ever became trustee, I believe.

THE COURT: That is what I wanted to get clear.

Q. You mean, Mr. Compton had incurred those expenses?

A. I think it goes beyond or behind Mr. Compton. What does it say there? Doesn't it say the "Columbia County—" something about Columbia County?

THE COURT: Is that the premium item that you spoke of?

MR. LEVY: That was the trustee's premium bond, which was paid.

THE COURT: By Maxi?

MR. LEVY: By Maxi long before this 1941 incident.

(T. 557):

THE COURT: And at the time of the closing that credit for that advance was allowed Maxi?

THE WITNESS: Yes. They had already paid it, and to make it official we had it put in here to get it set up.

THE COURT: Yes, I understand. You reported it so as to get it properly in the record.

THE WITNESS: Yes.

MR. MARGIOTTI: Now, of course what makes it a little misleading, Judge, is that he says the trustee,

Robert Michael, has paid the following for moneys advanced to him and requests allowances therefor.

THE COURT: Yes, but in fact it was paid by Maxi, apparently.

MR. MARGIOTTI: Paid by Maxi and he had nothing to do with it.

Q. Now, does that answer that you have made, Mr. Michael, apply to all those figures other than the ones that you have checked on D(J)-3?

A. Now, you totalled these from this point to here and you got $421.50.

Q. That's what I figured, if I am not in error in my mathematics, because I make mistakes in mathematics as well as other things.

A. Well, I think that is correct. The only thing that is questionable in my mind is this trustee's bond premium of $100. Now, I had a bond and it was $100, I don't ever remember paying it or who paid it. Whether that

(T.558):

is my bond or somebody else's—

Q. You would have to pay your own bond, wouldn't you?

A. Well, I might have to advance it.

Q. I mean out of the estate.

A. Out of the estate, but is that my bond premium? I can't remember.

Q. I don't know, I didn't make this paper up.

A. Well, I made it three and a half years ago and my memory isn't too good, either.

Q. Now, the Receiver bond premium Columbia County Equity proceedings allowed by Court order—

A. That was something I inherited.

Q. And the Injunction bond premium, I suppose your answer applies to that?

A. Yes.

Q. Additional copies, financial statement—

A. Those following items down to where I have marked it with the blue pencil are all to be classified as the same theory, all before my time and I can't go into it.

Q. Very good. Donnelly & Hepford, that is all in the same classification?

A. Yes.

Q. I will show you the original of this in a few minutes. In the meantime just look at the photostat of it, that will save a little time. Here, take the original, Mr. Michael, and I will take the carbon copy. That is Government's Exhibit G-4. This is a statement, is it not, in Mr. Knight's handwriting?

(T. 559):

MR. LEVY: Mr. Margiotti, I think you were mistaken about the exhibit number, it is G-2-D in this case.

Q. Well, they have a G-4 here.

A. It is marked G-2-D on here and G-4, both.

Q. Let me see which is which.

MR. LEVY: One is the Grand Jury number.

MR. MARGIOTTI: It is G-2-D.

MR. LEVY: That's right.

Q. Now you are holding in your hand Government's Exhibit G-2-D, aren't you?

A. I am.

Q. Now, do you know that that's a statement in Mr.

Knight's handwriting which on April the 24th—which was made April the 24th, at the time the payments were made, when the checks were issued, is that right?

A. Well, I wouldn't be in a position to identify Mr. Knight's handwriting but it says, "Taken from the files of Harry S. Knight."

Q. Never mind, without identifying it as that. Do you recall seeing that statement?

A. No, I can't say that I ever did.

Q. Do you know anything about it? I don't want to spend time on it if you don't know anything about it.

A. The only thing I can say, we were in Mr. Knight's office, I know he was doing some figuring and this very well could be the figures. The different sums here are all, that is, the majority of them that I have noticed, are familiar sums, $421.50 and $225 to Unangst.

(T. 560):

Q. You had nothing to do with putting these figures down?

A. I would say no, yet if there is any of my handwriting on here then I would have had to write it, but I don't recognize any of my handwriting.

Q. Of course if any of your handwriting is there, you wrote it?

A. That's right.

Q. We are not asking you whether it is yours or not, I don't believe anybody contends it is yours.

THE COURT: He appears to have no knowledge of the paper although the figures strike him as familiar.

MR. MARGIOTTI: That's right.

THE COURT: He said he can't recognize Mr. Knight's handwriting.

MR. MARGIOTTI: I am not asking him to do it, either.

THE COURT: All right.

Q. Now, Mr. Michael, do you know where this figure $9066.55 came from on Government's Exhibit 2-D?

A. Where is it? Is that on the first page?

Q. It is on the long page, I will put it that way, right up at the top.

A. Oh, $9,066?

Q. Yes; fifty-five.

A. Well, it obviously comes from the amount that would be paid to the trustee and his attorney for expenses and their fees totalled together.

Q. That represents your fees and your $1166, doesn't it?

(T. 561):

A. I think so, that $646.50 is the total you have there on that other sheet.

Q. That's right. Sixty hundred forty-six is what was deducted as you have stated.

A. That's right.

Q. That left the $8420.05; there is no question about those deductions and those payments just as you have stated them?

A. No.

Q. All right. Now, do you know what that item is, $421.50?

A. Why, yes, we just identified that as being the payments by Maxi of previous indebtedness.

Q. Now, you said something about receiving, possibly, another check, or made some reference to it. I don't know whether you want it to be understood that you got another check besides this $8,420.05 in connection with your expenses?

A. Oh, yes—not in connection with my expenses.

Q. Or your fees.

A. No, I got another check as trustee.

Q. I don't want to know about that, I only want to know about what you and Mr. Reifsnyder got because that is what you had to account for.

A. That is the total amount, $8,420.

Q. There were no other checks for expenses, of course?

A. No.

Q. All right. Now, had you previously received any fees or expenses in connection with the Central Forging Company case?

A. Not as allowed by the Court, no, or otherwise (T. 562): except the $3,000. I don't know—

Q. No, I mean had you received any other fees?

A. No.

Q. Or any other expenses?

A. No.

Q. Or any other sums?

A. That's correct.

Q. The only thing you ever received, then, was what is represented by this check?

A. That's right, yes.

Q. You couldn't be mistaken about that?

A. No, nothing directly.

Q. Well, indirectly?

A. Well, all I am thinking of is whether you are going to get a bond premium or something.

Q. No.

A. Well, no, the answer is absolutely no.

Q. So that we get you correct now, you did not receive any other money either from the Court or from any of the defendants or from any other—or from the trust funds except as represented by this check of $8,400?

A. That's correct.

MR. PRATT: May I interrupt? I don't want to have any confusion about it. The question that you asked was in regard to this check for $8,420.05, is that right?

MR. MARGIOTTI: Yes. Then I want to know whether he got any other money out of the estate.

THE WITNESS: No.

MR. PRATT: You have no reference to the other check for $8,500 and something which was given to him as trustee to be disbursed in accordance with the Court's

(T. 563):

order?

MR. MARGIOTTI: No, I have no reference to that.

THE COURT: As I understand the question it is limited as to whether or not Mr. Michael personally received any other allowances or payments or did he ever appropriate to himself out of the estate any allowances or payments for expenses, fees, or otherwise.

MR. MARGIOTTI: Exactly; couldn't be any plainer than that.

MR. PRATT: Excepting, of course, this $5,000 check.

MR. MARGIOTTI: Oh, we are not counting that one, either.

MR. PRATT: I just want it clear.

MR. MARGIOTTI: All-right.

Q. Now, you understand both me, the Court and Mr. Pratt?

A. I am quite sure I do.

Q. And you are quite sure that your answer is in the negative?

A. That's right.

Q. Now, according to your testimony in your calculation that you made here before the jury you deducted from the $8,420 and $500 which you or Mr. Reifsnyder had paid to Hervey Smith?

A. That's right.

Q. And you added—or did you make any other deductions besides the $500, or do you make any other deductions?

A. No—

(T. 564):

from the $7,900, you mean?

Q. Pardon me, sir, I am now talking about moneys actually paid out. You got $8,420. Did you, in making your figures between yourself and Reifsnyder, take off that $500 that was paid to Hervey Smith?

A. Why, yes, we deducted it.

Q. You deducted it. But that $500 had come out of the

pot, the $3,000 pot, or whatever it was, it didn't come out of this $8,400 check?

A. Well—

THE COURT: You see, that is going to lead to confusion, now, as I recall the testimony. I don't think you intended to make it confusing.

MR. MARGIOTTI: No, I am trying to make it clear.

THE COURT: As I recall it—

MR. MARGIOTTI: Just the opposite.

THE COURT: —scheme worked in this fashion: They actually paid Smith—that is Hervey Smith—

MR. MARGIOTTI: Hervey Smith. —I get the implication. That went over my head at first.

THE COURT (Continuing): On the day that the check was cashed, and at that time the cash was physically withdrawn from the proceeds of that fund, but each of the men, Reifsnyder and the witness, planned to deduct from their own fees a proportionate sum to make it up. Is that right?

MR. MARGIOTTI: That's right.

(T. 565):

THE WITNESS: That's right.

THE COURT: Is that right?

THE WITNESS: That's right.

THE COURT: So physically it came from the proceeds of the $3,000 check?

MR. MARGIOTTI: Right.

THE COURT: But the plan was that actually and at some time when their accounts were adjusted as

between themselves there would be a proportionate deduction from the fees allowed you by the Court?

THE WITNESS: That's right.

THE COURT: To make up the $500 thus given to Smith?

THE WITNESS: That's right.

THE COURT: Is that right?

THE WITNESS: It was simply a matter of convenience, that we had the $2,500 so we took $500 of it and gave it to him.

MR. MARGIOTTI: It was quite convenient.

THE COURT: Yes. All right.

I think this would be a good time to adjourn. The witness may leave the court room and the jurors may retire.

(The jury retired.)

(Discussion at side bar; not transcribed.)

(T. 566):

Scranton, Pa., Wednesday, October 24, 1945, 10:00 a. m.

Appearances: (Same as previously noted)

MR. BROOKS: If your Honor please, at this time I would like to interrupt the cross examination to offer a witness of the telephone company, a very short one.

MR. MARGIOTTI: We have no objection.

THE COURT: All right.

MR. BROOKS: Mr. Kuehta.

MICHAEL KUCHTA, called and sworn on behalf of the Government, testified as follows:

Direct Examination

BY MR. BROOKS:

Q. Mr. Kuchta, where do you live, sir?

A. Chinchilla.

Q. Pennsylvania?

A. Yes.

Q. What is your present business or occupation?

A. District Manager, Commonwealth Telephone Company, Clarks Summit.

Q. And how long have you occupied that position, sir?

A. Since 1941, I believe; four years.

Q. In that capacity with the telephone company do you have any of its records under your direct supervision or control?

A. Yes, I have them all.

MR. BROOKS: If your Honor please, I will have (T. 567) these two exhibits marked for identification 15 and 16.

(Exhibits G-15 and G-16 marked for identification.)

Q. Mr. Kuchta, I show you a Government exhibit for identification, marked G-16 and ask you, sir, if you can identify it.

A. (After examining): This is a card record which we carry of the Country Club of Scranton, showing the name—

Q. Well, without saying what it shows. Now, is that a record of your company kept in the regular course of business?

A. Yes.

MR. BROOKS: I now offer G-16 in evidence.

MR. MARGIOTTI: May I see it just a minute?

(After examining): No objection.

THE COURT: Let it be received.

(Exhibit G-16 received in evidence.)

Q. Now, Exhibit G-16 in evidence shows a telephone number given to a particular party or person, does it?

A. Yes.

Q. And who is that, please?

A. Country Club of Scranton.

Q. And what is the telephone number at that place?

A. 371.

Q. Can you state when that telephone number was given to that particular place?

A. Well, I can't say the exact date but this card goes back to 1939, so I am sure from that date on. (T. 568):

Q. And can you state of your own knowledge whether the number 371 from 1939 to the present date has been given to the Scranton Country Club?

A. Yes.

Q. Can you state, Mr. Kuchta, whether there are more than one telephone at that particular address?

A. There are six extensions off of the PBX board.

Q. And PBX board is what?

A. That is where the trunk lines terminate and an operator can pick up the signal from the exchange and then she can plug the various circuits in the building to the board.

Q. And can you state, Mr. Kuchta, whether during the year 1942 the telephone number 371 remained installed at the Scranton Country Club?

A. Yes.

Q. I show you Government's Exhibit for identification marked G-15 and ask you if you can identify it?

A. Yes.

Q. Without stating its contents, sir, can you tell us what it is?

A. That's a telephone statement that was rendered to the Country Club of Scranton.

Q. Now, Mr. Kuchta, does your company maintain records of long distance telephone calls?

A. Yes.

Q. For how long are those records kept by the company, or reserved?

A. We keep them for six months, then they are destroyed.

Q. Now, how long, if you know, has that been the company's policy?

A. Well, for quite some time. I can't

(T. 569):

say just how long.

Q. Can you state whether or not that was your policy during the year 1942?

A. Yes.

Q. So if there were telephone calls or long distance telephone calls during the year 1942 originating at the

Michael Kuchta—Cross

Scranton Country Club or going into the Scranton Country Club, would you have now those telephone toll slips?

A. No.

Q. They have been destroyed?

A. Yes.

MR. BROOKS: We offer that in evidence.

(Exhibit G-15 for identification handed to Mr. Margiotti.)

Cross Examination

BY MR. MARGIOTTI:

Q. Mr. Kuchta, Government's Exhibit No. G-15 is a statement of the telephone account for 371, Clarks Summit, which is the country club, for calls that were charged to 371 between the 21st day of January, 1942, and the 20th day of February, 1942?

A. Yes.

Q. Is that right?

A. Yes.

Q. And it is the usual bill sent out by the telephone company for additional service other than the regular service of the telephone?

A. Yes.

Q. And it merely indicates calls that were made from the number?

A. Yes.

Q. Without identifying a particular call?

A. That's right.

(T. 570):

Q. And your answer applies to everything on this

statement including reference to a call to Middleburg on the 19th day of February, 1942?

A. Yes, sir.

Q. And do you have any way of knowing who made that particular call?

A. No.

Q. And I want you to state whether or not—strike it out, please. When a member of the country club—oh, first of all, do you know how many members there are out there? You spoke about six extensions.

A. I have no knowledge of the number of members.

Q. About 350?

THE COURT: He said he has no knowledge of it.

Q. You don't belong there?

A. No.

Q. I beg your pardon. If a member of the country club, no matter who he was, wished to put in a long distance phone call, how could that be done?

A. Well, he could ring from any one of the extensions to get the local operator at the club and she would place the call then with the Clarks Stammit operator.

Q. I see. And then whether or not it would be charged to that particular member is a question within the club itself?

A. That's right.

Q. Now, do you have a telephone bill beginning with, say about December 1st of '41 and extending to January 21st of 1942, the bill just before this?

A. I do not have that

(T. 571):

bill there. I don't know where that came from.

Q. I see. Well do you have such a bill, a copy of the bill, in your custody?

A. No.

Q. You destroy the telephone slips, do you also destroy these bills?

A. Well, we get a small copy of that bill.

Q. And that is what I am talking about.

A. And that copy has probably been destroyed now. We keep them a certain length of time and then they are destroyed.

Q. And what about the bill that followed this one?

A. I have no record of that bill either.

Q. And your answer as to what you just said concerning a bill that went before it applies to the one that came after it?

A. Yes, as far as I am concerned.

Q. All right. On this bill I notice under the date of 1-29—that means January the 29th—1942, New York, New York, 26 T 03; what does that mean?

A. T 03?

Q. Yes. Does that mean a telegram?

A. T denotes telegram. Now, I can't—if I see that I can tell you.

Q. Suppose you look at it.

A. (After examining): Yes, that's telegram.

Q. All right.

MR. MARGIOTTI: Do you want to introduce it?

MR. BROOKS: Yes. If the Court please: we offer the exhibit now in evidence, Exhibit G-15.

THE COURT: Any objection?

(T. 572):

ROBERT MICHAEL, resumed the stand.

MR. MARGIOTTI: May I ask Mr. Pratt whether this file marked Government's Exhibit G-8-A now contains all the papers that were in it at the time the file was obtained? with the exception of those two yellow sheets.

MR. PRATT: As far as I know.

MR. MARGIOTTI: All right. Now, here is what I would like to have—pardon me, there was a letter the other day that was identified from this file.

THE COURT: Yes, I think in addition to the two sheets that were withdrawn there may have been—was there a letter?

MR. PRATT: There was a carbon copy of a letter.

THE COURT: A carbon copy of a letter was withdrawn from it.

MR. PRATT: Addressed to Mr. Knight. I don't see it here. I suppose it is some place else.

THE COURT: Otherwise all the papers of the file,

(T. 573):

so far as you know, are intact?

MR. PRATT: As far as I know, your Honor.

Cross Examination (continued)

BY MR. MARGIOTTI:

Q. Mr. Michael, of the $8,420 which you received for yourself and Mr. Reifsnyder, for your joint expenses, your

computation, you distributed among yourselves $520.05 as between you and Mr. Reifsnyder?

A. That's right.

Q. That's correct. As far as that particular cash is concerned that was reflected in the check which you gave to Mr. Reifsnyder, that is, for his own expenses?

A. Yes, that's right.

Q. But it also reflected in the check the $500 which you and Mr. Reifsnyder gave to Hervey Smith?

A. That's right.

Q. So that when that was reflected you had $7920.05 left, is that correct?

A. I don't follow you on that.

Q. Well, let me make it just as plain and as simple as I can. So far as your expenses are concerned, eliminating the expenses and all your figuring, you were to receive the sum of $2,900 apiece—or $3,950 apiece?

A. For fees, yes.

Q. For fees.

A. That's right.

Q. No matter how you figure, when you divided the money you had in your hands you gave to Donald Reifsnyder the sum of $3,893.80?

A. I gave him a check for that amount.

Q. All right, you gave a check for that amount. (T. 574):

A. That's right.

Q. And you took for yourself, according to your own figures, $3842.91?

A. According to that paper, that is what I would have got, yes.

Q. And your fee, of course, was $3950?

A. That's right.

Q. Now, in making up your statement didn't you have a separate expense account?

A. No.

Q. Well, isn't it a fact that you had made trips that were not made by Mr. Reifsnyder?

A. That's right.

Q. You had the management of that plant, did you not?

A. That's correct.

Q. And you were required to make more trips than he was?

A. That's right.

Q. You used him only in connection with legal matters and the reorganization plan as you have already testified?

A. That is largely true, yes.

Q. All right. Now you say that when it came, however, to dividing your expenses, while the sum was $411, you just divided that equally?

A. That's correct. For reasons which I could give you if you wish.

Q. Well, you can give them if you wish; if you don't, it is all right with me. I don't want to cut you off. I will let you do as you please.

A. Well, I had more actual mileage, perhaps, but he was maintaining an office. I had no

(T. 575):

part of that expense. I'll admit that if we had kept perhaps penny and dollar items, one of us would have had more than the other.

Q. Well, you did keep a memorandum of your expenses?

A. Not down to the point of where who spent this or that, it was simply—he kept a list of the trips made so he could have some basis to support our—

Q. Well, didn't you tell Mr. Goldschein in the Grand Jury room that you kept some sort of a memorandum and that when you made up your list of expenses you turned it over to Mr. Reifsnyder so he could make up the expense list? Didn't you say that?

A. No, I said Mr. Reifsnyder kept track of all the expenses on the trips.

Q. And didn't you also tell Mr. Goldschein in the Grand Jury room, that is, before the entrance of your plea, that you did have a memorandum—that is the memorandum you couldn't find, he asked you to go and look for it and then you said, "Well, now, that memorandum I used to use to turn over my expenses, as they were made, to Mr. Reifsnyder who kept track of them, but I could not find the memorandum." Didn't you testify in substance to that?

A. In a way. Now, for instance, like the telephone calls; I would take the telephone calls off the bill and drew a check to the country club and then I would tell Donald about it and he would write it down. If that is handing over the memorandum, yes.

(T. 576):

THE COURT: Are we going through what constitutes a book and what constitutes a memorandum again?

MR. MARGIOTTI: No, I am not.

THE COURT: I thought we went all over that yesterday.

MR. MARGIOTTI: I don't care what constitutes a memorandum, but I do care about this keeping these expenses and how they were divided because—

THE COURT: I just didn't want to get into that round robin we were in.

MR. MARGIOTTI: No; I assure you I will not repeat.

Q. So that as I get your answer definitely; you say now that you didn't tell—did you or did you not tell Mr. Goldschein in the Grand Jury that this memorandum was used for your expenses and you turned it over to Mr. Reifsnyder at the time you would turn in your expenses? Did you say that or didn't you? Just "Yes" or "No."

MR. PRATT: If the Court please, it doesn't seem to me it is a fair question.

MR. MARGIOTTI: What is that?

MR. PRATT: It doesn't seem to me it is a fair question. The occurrence before the Grand Jury that took place several years ago, and it seems to me—

MR. MARGIOTTI: I am trying to save time. (T. 577):

THE COURT: Save time? In the interest of time I thought we had been back and forth over this the other day, but if you want to begin again, I am willing to take another ride on the merry-go-round.

MR. PRATT: I don't want to lengthen this examination but it occurred to me—

THE COURT: Well, I don't want to shorten it if Mr. Margiotti thinks it is important, but I thought we had been so thoroughly back and forth over this ground that I see no reason to go back to it.

MR. MARGIOTTI: Here is the question I will ask:

Q. Mr. Goldschein said this to you: "Mr. Michael, did you look for that memorandum book that you had during the time that you were trustee of the Central Forging in which you made entries of expenditures?

"A. I did and I have been unable to locate it and it is my belief that I had turned it over to Mr. Reifsnyder at the time that he prepared the expense account."

A. Well, as I explained the other day—

Q. Well, first, did you so state?

A. Yes, if you are reading correctly. And as I explained here the other day in answer to practically the same question, that I kept no memorandum book in the same way, or what you would define as a book. Certain trips that I took not in the company of Mr. Reifsnyder, I would jot on a slip of paper and I am not

(T. 578):

clear whether they were contained all on one sheet or I gave them to him at different times, but all of the trips I made I am sure I turned over to him.

Q. What did you do with your telephone expenses? Did you have the same telephone bills as he had?

A. No; we just—

THE COURT: He explained that he took off the phone bills and passed the slip on to Reifsnyder.

Q. All right. Then did you take the telephone bill, irrespective whose bill it was, and divide it in two?

A. You mean between Reifsnyder and I?

Q. Yes.

A. Yes.

Q. No matter how many calls you had to pay or he had to pay?

A. The whole $411, as I said, was divided equally.

Q. I understand.

A. Including the telephone calls.

Q. Did you put in all your expenses in this accounting that you had among yourselves?

A. Why, I imagine that I did.

Q. Now, this statement here that was filed in court was filed on April the 16th and you had expenses after that date, between April the 16th and the date when you made the settlement, didn't you?

A. Well, then we didn't collect on that.

Q. I am asking you that, I am asking you if you didn't have some.

A. I can't answer offhand when that was made up.

Q. Well, I can tell you that it was filed in court, and (579):

it is the Government's Exhibit, April the 16th, 1942.

A. Then we had other expenses after that.

Q. Exactly. Now, then, I am getting to your accounting. Isn't it true, then, that you had the figure on other expenses that you had and if that was reflected in your distribution

A. I don't follow you on the question.

Q. Well, if you had other expenses wouldn't you want to distribute those expenses, too, between yourselves?

Wouldn't you want to take credit for your expenses?

A. Well, I assumed that we did. As I have stated, I didn't draw up that expense account, Mr. Reifsnyder did.

Q. Well, just answer this question: Do you know how much expense you had to adjust following the date when this expense account was filed and before you made your distribution among yourselves?

A. No, I don't, I couldn't answer.

Q. All right, Now, you testified the day before yesterday, when you left Mr. Reifsnyder's—no, that is the next day, which is April the 25th, you took to Mr. Reifsnyder $591-and-some-odd cents because Mr. Reifsnyder has said to you he wanted that $500, and as you said here, the $91 was the difference—was $183 divided in two. You remember that?

A. That's right.

Q. You did do that, didn't you?

A. I did that.

Q. And there is no question but what you turned over to

(T. 580):

Mr. Reifsnyder the sum of $591-and-some-odd cents, as you have testified?

A. That's right.

Q. When you gave him—strike it out, too, please. Now, isn't it a fact that after you entered your plea of guilty you appeared before the Grand Jury—and you say this is the truth, too—and testified as follows:—this is on April 4th and 5th, I think Mr. Pratt said—

"Reifsnyder—" This is at the bottom of page 553? for your convenience—"in Reifsnyder's office to some extent,

and then he decided that due to the fact that it was impossible to determine what our tax would be and what our tax might be, even as much as 35 per cent, that he should be content with $2500 which was put through for the sole purpose of taking care of him,—" that means Donald Johnson—"anyway, and that to go on and add something more to it at this particular time, we just wouldn't do it. So I gave him then—he kept that check and I gave him—" this is Reifsnyder— "$341.67, which makes his share, $4,235.47 which he received."

A. That is correct, and I would like—

Q. Pardon me just a minute. You answered the question "That is correct." Now, you have testified that you gave him $591. Here you testified that your gave him $341.67.

A. I can explain it, and the explanation is that when that question was asked of me, "How much money did you give to Donald Reifsnyder?" I said, "It is not clear, I can't tell, it is

(T. 581):

several hundred dollars." And if my recollection is correct, I think you will find in that testimony that I said it was somewheres around $500. The only way that I could be clear on it would be to sit down and figure it out.

Q. Well, Mr. Michael, when you testified in chief you said in plain language the next day, "I took $500 in cash and $91 in cash."

A. That's right.

Q. "And I took it to Mr. Reifsnyder and I handed it to him." There is no question about what you said you handed him that much, is there?

A. Well, I am testifying—

Q. Wait a minute. Isn't it true there is no question that is what you said?

A. That's right. But as to the amount of the money, I had to rely upon mathematical figuring.

Q. All right. Now, then, when you testified before it wasn't $591 that you handed to Mr. Reifsnyder, but you handed him $341.67.

A. Because in that figuring I made a mathematical error.

Q. All right. Which figure is correct?

A. The $591.

Q. 591. Well, isn't it this: If you were paid together why should you pay the full $500?

A. I didn't.

Q. Why didn't you just give him $250?

A. Well, that—you figure it out and you will find that is the way it figures out, $591. That's the mistake I made in relying upon my memory.

Q. Well, you did give him the $591?

A. That's right.

(T. 582):

Q. You couldn't be mistaken about that?

A. No.

Q. Well, why wouldn't you give him the full $500 if you were paying half of it and he was paying half of it? Why didn't you give him $250 and also half of the $83?

A. Because I had the money, I had the original check out of which the money came.

Q. No, that money, that $500 you didn't have, that was $500 that you didn't get from that check.

A. What 500? the 500 that Donald gave to Hervey Smith?

Q. No, the $500 that you took from your home, or wherever you got it—

THE COURT: Mr. Margiotti, I am afraid, and I don't like to interfere with your cross examination, I am afraid this has now again placed it in confusion and I must interrupt and I am going to see if I can clear it because while the witness talked I took the figures myself.

MR. MARGIOTTI: I have no objection, Judge.

THE COURT: Now, as I understand, the day you received the cash—get this clear now—the day you cashed the $3,000 check at the Catawissa Bank $500 of it went to Mr. Fenner.

THE WITNESS: That's right.

THE COURT: Leaving you and Reifsnyder with $2,500 of it.

(T. 583):

THE WITNESS: That's right.

THE COURT: You and Reifsnyder had in mind at that time a plan to pay Hervey Smith $500, is that right?

THE WITNESS: That's right.

THE COURT: So you left the bank with $2,500 in cash and the check in the amount of $3,000-and-some-odd?

THE WITNESS: That's correct.

THE COURT: All right. You went from there to Bloomsburg.

THE WITNESS: Bloomsburg.

THE COURT: Where you took $500 of the cash, the proceeds of the $3,000 check, and you delivered it to Hervey Smith, is that right?

THE WITNESS: That's right.

THE COURT: And since you had agreed to pay half you were indebted to Reifsnyder for half of that $500, is that right? You had agreed to pay half of Hervey Smith's fee?

THE WITNESS: That's right.

THE COURT: All right. Now, later, from the proceeds of the $8,000 check, in addition to the fee that was paid to Reifsnyder, you paid out $591, is that right?

THE WITNESS: That's correct.

THE COURT: And as I understand that, and according to my computation and the figures I took the other

(T. 584):

day while you were talking, that $591 included 341 of expenses and $250, which was half of the Hervey Smith fee.

THE WITNESS: That is not quite right, your Honor.

THE COURT: I am just trying to get it clear, I don't know. I am confused and I frankly admit it.

THE WITNESS: Here is where the confusion is existing, or created, by this: When we handed Hervey $500 we handed it out of the $2500 and it should have come out of the $8,400 which I had.

THE COURT: Yes, that I understand.

THE WITNESS: So that when I squared up with Reifsnyder I had to take that 500 out of the $591 and give it back to him.

THE COURT: Yes.

THE WITNESS: Plus the $91-and-some-odd cents, which was the difference between what those sheets show what we intended to do and what we actually did. Now, that is the same kind of confusion that caused me to testify as before the Grand Jury, it wasn't clear in my mind and I couldn't say now that I remember counting out bills in the sum of $591. I knew it was a sum of money in that neighborhood and I relied on figuring, say 341, because I was figuring half of 500 plus the 91, that must be what I gave him but that is it.

(T. 585):

THE COURT: All right.

BY MR. MARGIOTTI:

Q. Well, now that that is all over and the atmosphere is clear and we have it all cleared up, isn't it a fact that in the calculation that is on those yellow sheets and in your own calculation that you take credit for the $500 that was given to Hervey Smith?

A. Well, of course.

Q. All right.

A. Naturally. It is in the figures, the figures speak for themselves.

Q. I don't want to argue about it, you do that. Now, then, how did you happen to take $500 in cash, or $691 in

cash—$591, pardon me, about $600, using round figures, in cash in your pocket on a Saturday morning over to Reifsnyder's office? How did you happen to do that?

A. What do you mean "happen"? I did it deliberately.

Q. Well, why? Who asked you to do it, if anyone?

A. Why, it was agreed between us the night before, as I have so testified, that I would come to his office the next morning and bring down $500, or an amount of money to make up the difference.

Q. You would bring down $500. Mr. Reifsnyder asked you to do that?

A. Why, I can't remember whether he asked me to do it or not or I told him I would be down.

Q. Well, did he mention to you "Bring me $500"?

A. Well, he knew he was short and we had to make up the money

(T. 586):

to make up the $2500, and it was agreed that I would come down the next morning and deposit the $8,400 check, bring him a check for $3,800 and—

Q. Where did you get the $600 in cash?

A. I had it in my possession.

Q. Where?

A. At the club and on my person.

Q. I see. That took up all the cash you had?

A. No, I always carried anywhere from a thousand to fifteen hundred dollars in cash.

Q. And from this cash that you carried on your person you then took this money over to Mr. Reifsnyder?

A. That's correct.

Q. You didn't have it on your person the day before?

A. I could have had, yes.

Q. Why didn't you give it to him then?

A. Because I was coming down the next morning to deposit the check and bring him his check.

Q. By the way, isn't it a fact that Mr. Reitsnyder and you—you gave him a check for whatever he wanted, that he figured out what he wanted and asked you to give him that check, and he didn't know whether he was overpaid or underpaid? Now, did you have a discussion about that?

MR. PRATT: Now, if the Court please, there are a good many questions there, I don't know which one he wants answered.

(T. 587):

MR. MARGIOTTI: I will withdraw the question.

Q. Did you have any discussion with him about whether he was overpaid or underpaid?

A. I don't remember if I did in that sense.

Q. Isn't it a fact that immediately after—that within a few days after you gave him the check for $3,800 that there was an adjustment made between both of you and he gave you back almost a hundred dollars in cash? Didn't that happen?

A. I don't remember.

Q. You don't remember. Wouldn't you remember if somebody gave you a hundred dollars?

A. Not particularly.

Q. Not particularly. Well, let's see.

A. Not three and a half years ago.

Q. Did you not testify as follows before the Grand Jury in August, August of 1944 — and in order to make it clear, before you entered the plea — as follows:—

A. I will admit that I did testify falsely at that time.

Q. Just a minute. You don't know what I am going to say, just wait, I am going to read it.

This is Mr. Goldschein.

A. That is in August, the false testimony you are going to refer to?

Q. Oh, of course.

A. Well, I have already admitted that that was false.

Q. I see.

MR. PRATT: What page are you reading from? (T. 588):

MR. MARGIOTTI: On page 27:

"Q. I stopped you because I didn't want to say I was telling you to say anything." This is merely an introduction. "Because I am not telling you to say anything.

A. All right. I was anticipating you, so that is all right. I gave Mr. Reinyder that check and subsequently I gave him $500 in cash.

"Q. Was he supposed to receive $3893.80 plus $500?

"A. No; at the time I gave him that check, that was Green, that amount on it." In other words, Green is marked here, probably miswritten: "I didn't know what it was for, why he asked for that particular check. If you want

me to suppose, I will be glad to give you what I thought at that time, tell you why I allowed that check.

"Q. Do that.

"A. He was a member of a firm, as I have already told you, Stark, Bissell and Reifsnyder. I didn't know under what kind of a firm plan they were working, and I thought when he said he would like a check today for this amount of money, we will get together later on the difference, I thought that was the amount he wanted to turn into his firm. It was so close, I thought maybe he would deduct the expenses or something, and that is

(T. 589):

the way it was. I didn't know under what arrangements they were working as part of the firm of Stark, Bissell and Reifsnyder.

"Q. When you gave him that $500 additional, did you have any conversation with him with reference to whether or not that cleared up the account between you?

"A. He mentioned the fact that at that point he was overpaid. And afterwards, sometime afterwards, we did get together and decided to balance the thing. I think he paid me back less than $100, to balance the whole account.

"Q. He paid you $100?

"A. It was something like that. If you want to, I can figure it right out.

"Q. Let's figure it out."

And so you started figuring.

"A. I can't remember, I would have to see—that is about what he paid me back.

"Q. Let's try it that way.

"A. I will have to have that."

Did you so testify?

A. I so testified falsely at the time of that Grand Jury investigation.

Q. By the way, did you also file with the Court—

MR. MARGIOTTI: Mr. Pratt, I don't find it here.

(Discussion off the record between counsel.)

(T. 590):

Q. Mr. Michael, when you made your report in April of '42 I find in Mr. Reifsnyder's file a copy of an affidavit. We have just been looking here to see whether or not it was attached to the papers and I don't know whether it was or wasn't, but it is in here, anyhow, this copy is here, and I want to ask you if you remember making an affidavit in April of '42 in your report to the Court that "The proposal—" the plan of reorganization—"The proposal thereof was in good faith—"

MR. PRATT: Pardon me, this is not in evidence.

MR. MARGIOTTI: Well, I am asking him if he did. He is under cross examination.

MR. PRATT: Well, you can't read it. I object to counsel's practice.

MR. MARGIOTTI: Let the Court direct me what to do; I will do what the Court tells me.

THE COURT: What are you reading from, Mr. Margiotti?

MR. MARGIOTTI: I am reading from an affidavit in the Government's exhibit, a form of affidavit, there is no signature to it. It is G-8-A.

THE COURT: It may be something that was drawn and never filed.

MR. MARGIOTTI: Exactly.

THE COURT: If it isn't filed why must we go into (T. 591): it? We have gone up enough side alleys.

MR. MARGIOTTI: I can't tell you, Judge, I don't know.

THE COURT: Well, the original file is here.

MR. MARGIOTTI: I know that, but this is the original file, too, so they say, and this is in here.

Q. Let me ask you, did you draw—

THE COURT: Did you ever draw papers and decide not to file them and leave them in your files?

MR. MARGIOTTI: Sometimes, and that happens to everybody, and it happens I do have copies in there that people do sign; now I want to find out which.

Q. Do you remember making an affidavit like that?
A. (After examining): I couldn't say "Yes" or "No."

THE COURT: Does that copy bear any signature copy or anything?

MR. MARGIOTTI: No.

THE COURT: Just a blank?

MR. MARGIOTTI: It is a blank affidavit and that is the reason I was inquiring of Mr. Pratt because I wanted to make certain that it was true.

THE COURT: All right. While they look for the papers we will take a short recess.

The witness may step down.

MR. MARGIOTTI: I am looking for another paper.

Robert Michael—Cross

(T. 592):

THE COURT: That is what I say, while you are looking for your papers, the jury may take a short recess.

The jurors may retire.

(The jury retired.)

(A short recess was taken.)

MR. MARGIOTTI: If the Court please, I was examining the witness on a paper when we recessed and Mr. Pratt—the one I had a copy of in the file—produced the original of, which he had signed.

THE COURT: All right.

MR. MARGIOTTI: I thank Mr. Pratt for his fairness in the matter.

(Exhibit D(J) 4 marked for identification.)

Q. I show you Exhibit D(J) 4, which is an affidavit, with a signature on it. Will you look at that and tell me whether you recognize that signature?

A. Yes, I signed that.

MR. PRATT: Is that in evidence, may I inquire?

THE COURT: For identification.

MR. MARGIOTTI: I have merely identified it.

Q. Did you swear to this?

A. Yes.

Q. And were the facts correct as stated therein?

A. (After examining): Yes.

Q. And this paper says that "The proposal thereof and

(T. 593):

the reorganization plan was in good faith and the acceptances by the creditors has not been procured by any means or promises forbidden by the Bankruptcy Act."

A. That's right.

Q. That was all correct when you filed this?

A. What's that?

Q. That was correct when you filed this?

A. Well, in so far as to what it pertains, at least as far as I can interpret the meaning.

Q. All right. That's all I want to know. Now, at the time you met with Mr. Reifsnyder in his office on April the 25th when you gave him the cash, whatever it was, were these two yellow sheets that have been introduced in evidence there?

A. I don't remember that they were.

Q. Now, Mr. Michael, on the yellow sheets there is some reference to income tax, both for yourself and for Mr. Reifsnyder. Do you know whether or not Mr. Reifsnyder filed his income tax in accordance with this statement?

A. I can't answer.

Q. Do you know whether you did?

A. I did.

Q. In accordance with this statement?

A. Oh, not with that statement, no.

Q. You filed an income tax return?

A. That's right.

Q. Did you in your income tax return reflect an account for the moneys you received?

A. Yes.

Q. Do you have a copy of that return?

A. No, I do not.

(T. 594):

Q. Didn't you keep a copy?

A. Oh, I thought you meant did I have it with me.

Q. No.

A. Yes, I have a copy, or my auditor has a copy of it.

Q. Would you be kind enough to let us see it?

THE COURT: What is its materiality, Mr. Margiotti?

MR. MARGIOTTI: For the purpose of determining whether or not it is in conformity with this statement.

THE COURT: Suppose it isn't? What materiality has it?

MR. MARGIOTTI: It affects the witness's credibility.

THE COURT: Oh, no, I have allowed you the widest latitude in all these documents but—

MR. MARGIOTTI: You certainly have.

THE COURT: But I don't want to try an income tax case now. I have all I can do with this one.

MR. MARGIOTTI: I think you are right on that. Well, Judge, I just want to ask a question or two on the matter.

Q. Isn't it a fact that these statements, which were prepared, or which are here in evidence, were discussed with you and Mr. Reifsnyder only for the purpose of getting ready to file your income tax return?

A. That is not true.

(T. 595):

Q. At the time the Government began its investigation were you not asked about income taxes?

A. About income taxes?

Q. Yes.

A. No, not at the beginning.

Q. Well, during your investigation?

A. Oh, yes.

Q. Now, listen to this: Isn't it true that Mr. Reifsnyder told you "They are after me on my income tax and I have got to have a statement showing how we divided that money"?

A. No.

Q. It didn't happen?

A. No.

Q. Was there any discussion about it?

A. I don't know—no, Reifsnyder never mentioned income tax to me.

MR. MARGIOTTI: If your Honor please, I would like to make a motion at the side bar with reference to the witness's testimony, merely to striking certain parts of it out.

THE COURT: Are you finished with him?

MR. MARGIOTTI: On this particular branch of what is in my mind, I want to get rid of it on these sheets. Can I do it at the side bar?

THE COURT: Oh, surely.

(At side bar.)

MR. MARGIOTTI: The defendant now moves the Court to strike from the record Government's Exhibit

No. G-8-C and Government's Exhibit No. G-8-B, and to instruct

(T. 596):

the jury to disregard them for the following reasons: First, the Government has failed to establish that these sheets were made by one of the alleged conspirators, Reifsnyder, during the course of the conspiracy and in furtherance of the alleged conspiracy.

Second, the papers have not been properly identified as having been made by Reifsnyder on April the 24th on the alleged trip between Wilkes-Barre and Scranton, Pennsylvania, during darkness.

Next, although these papers were taken from the file of Don Reifsnyder on August the 24th, 1944, by Government Agent Weber, they were secured approximately two years after the alleged conspiracy had terminated and after the Government had interviewed Reifsnyder, himself, and opportunities had been given to Reifsnyder and others both to make the exhibits and place them in the Reifsnyder file. The evidence on the part of the witness who is on the stand as to the effect that he did not identify these papers because he does not know that these are the papers that were used the night of April the 24th, but does know the figures on the papers were discussed.

Next, the testimony as to the defendant Donald Johnson is generally incompetent, irrelevant and immaterial.

(T. 597):

(The Court examined Government Exhibits for identification G-8-B and C.)

THE COURT: The only entries on this, or these sheets which have given me any concern are the initials; the figures are in substantial agreement with the witness's knowledge of the figures. I must frankly confess that the doubt arises in my mind as to the effect of the initialing. Of course that would affect only the defendant Johnson.

I will reserve decision on your motion, I want to look at some of this testimony, and some time before the conclusion of the case I will rule on it.

MR. MARGIOTTI: All right, Judge.

THE COURT: In the meantime the jurors will not be shown the exhibits, they haven't seen them—

MR. MARGIOTTI: Oh, yes, they have, they showed them to the jury.

MR. BROOKS: I don't think we passed them around.

MR. MARGIOTTI: The last thing that was done Friday noon, Mr. Pratt showed them to the jury. Is that right, Mr. Pratt?

MR. PRATT: That's right.

THE COURT: If they have, I shall give them an instruction to disregard them. Yes, I think you are right.

(T. 598):

MR. PRATT: These papers and the other yellow sheets that Michael made himself, while testifying were passed.

THE COURT: That's right. I thought they were only his sheets but I think you passed both of them, that's right. If these are stricken it will require—

MR. MARGIOTTI: An instruction.

THE COURT: —an instruction. Of course no one has attempted to interpret, and I don't think it would need much interpretation.

MR. MARGIOTTI: Don't forget Dan Jenkins, Judge.

THE COURT: That's right, I hadn't thought of that, I hadn't thought of that. Maybe you want them in.

MR. MARGIOTTI: No, Judge, no, no. I looked at the telephone directory last night to find out how many D. J.'s there are. In Scranton alone I counted 38, in Scranton alone, D. J.'s.

MR. PRATT: It stands for Department of Justice.

MR. MARGIOTTI: That's right, Judge, it stands for Department of Justice.

BY MR. MARGIOTTI:

Q. Mr. Michael, when you fixed the date as February 19, 1942, when you testified that you called Donald Johnson at Middleburg, you fixed that date by that telephone slip that the Government has introduced in evidence?

A. That's right.

(T. 599):

Q. Now, before you fixed the date you were shown that slip—before you definitely fixed the date were you shown that slip, I will put it that way?

A. Well, I might say that I was.

Q. First answer and then explain.

A. Yes.

Q. If you want to make an explanation, I don't care.

A. Well, I was given the file at my request to go over the file and read certain papers and so on for that purpose.

Q. All right. So that's how you fix the date February 19. Now, then, I am going to discuss another date that you fixed, to wit, April the 27th, the day that you state Donald Johnson called you on the telephone from Middleburg and you were at the country club. There is a telephone slip on that?

A. Is that your question?

Q. Yes.

A. No, I didn't need the telephone slip for that particular date because the events there followed very closely together.

Q. I see. You remembered it was the day after you came back from Catawissa or wherever it was that you went?

A. Right. I couldn't fix the hour of the day but I knew it was the date.

Q. All right. Now, I believe you have testified that Donald Reifsnyder is alleged to have said to Donald Johnson, "I will give you a letter showing our understanding that if I save some money on the income tax next year I will make a

(T. 600):

redistribution," or words to that effect?

A. That's correct.

Q. Did you ever see such a letter?

A. No.

Q. Did you ever know that such a letter existed?

A. No.

Q. Did anybody ever tell you that such a letter existed?

A. No.

Q. Did you ever see any such letter in your joint file that has been introduced here in evidence?

A. No.

Q. Didn't you testify before the Grand Jury in April the 4th and April the 5th, at the time when you say you were telling the truth, you were asked this question by Mr. Goldschein: "Do you know—"

MR. PRATT: What page?

MR. MARGIOTTI: Page 5541.

Q. "Do you know whether he—" meaning Reifsnyder, "ever gave Donald Johnson a letter to the effect that he would reimburse this money to him if he paid less taxes?

"A. I recall a conversation with Don Reifsnyder afterward in which he said he did give Donald Johnson a letter to that effect, that he would reimburse him if his taxes showed that he paid less than an amount to that, and I remember him saying, 'And I will keep the papers so that we can check it a year from now.'"

Didn't you so testify under oath when you said you were telling the truth that time?

A. Well, now, that's a long question there.

(T. 601):

Q. Do you want to see your question and answer?

A. I would like to see my answer, yes.

Q. You better look at both of them.

A. Well, of course I am relying strictly on my memory and I am not sure as to whether Don ever said it or whether he didn't.

Q. And yet you swore to it before the Grand Jury when you were supposed to be telling the truth—when you say you were telling the truth, put it that way?

A. Well, I could have been confused at that time as to whether I was repeating as to what Don Reifsnyder said in the presence of Donald Johnson at the time of our conversation, or afterwards; I don't remember of testifying in that particular vein at the time before the Grand Jury.

Q. All right. When you testified before the Grand Jury before you entered your plea, did you know at that time that Mr. Knight and Mr. Fenner and Mr. Davis had preceded you in their testimony?

A. Well, that I don't quite understand for this particular reason—

Q. In plain language, did you know they had gone before the Grand Jury and told their stories before you were called in?

A. No, I didn't know that. I met them here at various times, they testified more or less—

Q. All right, that's all. Mr. Levy suggested this. In the contempt proceedings before his Honor, Judge Smith, these three gentlemen testified in your presence?

A. They did, yes.

(T. 602):

Q. You didn't testify in that case?

A. No, I didn't.

Q. Now, Mr. Michael, you have testified that when you went to see Don Reifsnyder, when you were going to hire him as your lawyer, that he told you that Don Johnson had talked to him and he expected you, or words to that effect?

A. I got the inference or feeling that—I can't remember any wording that he had been approached or he expected me.

Q. You remember that he said that, or did you just think that?

A. Well, I would imagine that he made some remarks that made an impression on me.

Q. At any rate, you got that impression but you don't recall him saying it?

A. I can't testify as to what he said but I had that impression.

Q. All right. That's satisfactory. Now, isn't it a fact that when you were first appointed trustee for the Edington Distilling Company that it was you who went to Don Johnson and asked him if he would recommend you to his father to be trustee, some sort of a trustee, put it that way; is that correct?

A. I don't think I could place it on any particular date or conversation.

Q. I don't care about the date or time, but about the first time you became a trustee—you were a trustee twice?

A. That's right.

Q. The first time, isn't it a fact that you, yourself, asked Mr. Johnson if he wouldn't recommend you to his father (T. 603):

to act as trustee, that you would like to get a job as trustee?

A. I say I wouldn't define it down to that definite statement of any kind, it was a thing that grew up over months of association. Who was the first one that said, "Well, you ought to be a trustee," or something, I don't remember.

THE COURT: Well, did you know Judge Johnson, himself, prior to your appointment as trustee in the Edington Distillery case?

THE WITNESS: Oh, yes, I knew Judge Johnson before I knew Donald Johnson. Not well.

THE COURT: Not well?

THE WITNESS: No. He used to stay at the hotel with me, that is how I got acquainted with him first.

Q. Well, now, didn't you testify not very long ago, before the Grand Jury, April 4th or April 5th, this time you were saying the truth—weren't you asked this question: "Will you tell the Grand Jury how you got that appointment?" Now we are referring to Edington. This is on page 5558.

"A. Well, I got it through Donald Johnson.

"Q. Well, just tell us how that came about.

"A. Well, I don't know just the beginning of it, but I suggested to Donald some time previous to that that I would be interested in being made a trustee, and some time after that he came to me and said that his father was considering

(T. 604):

appointing me as trustee of the Edington Distilling Company.

"Q. And when you told him that you would like to be appointed a trustee; did you tell him the federal court here? did you tell him trustee of what or in connection with what?

"A. No, there was nothing of definiteness."

Did you so testify?

A. I did, and that doesn't disagree with what I have

just said here. It might be a little more definite, on certain things.

Q. Well, it does say here—you did say here that you told him, "I suggested to Donald some time previous that I would be interested in being made a trustee."

A. Well, that still doesn't disagree with what I just said here.

Q. Let's not argue, let's go on.

THE COURT: Let's not make mountains out of mole hills. There is no substantial disagreement even now. He said it grew up and I guess it did grow up, I don't know, but there is no substantial disagreement. I don't see any reason, Mr. Margiotti, to go over the Grand Jury testimony unless there is some real conflict that would discredit the witness. But there is no distinction between tweedledum and tweedledee, this quibbling makes no difference.

MR. MARGIOTTI: There is no question of the difference, it is a question of this witness trying to leave the impression with the Court and jury that Donald (T. 605):

Johnson came to him and asked him to become a trustee and made all the arrangements, where, as a matter of fact, he previously testified that he asked Donald to be a trustee.

THE COURT: He said it was a thing that grew up out of their acquaintanceship, as I understand this testimony.

MR. MARGIOTTI: There is no question but what they talked, there is no question but what they had some discussion.

THE COURT: And there is no question but what he was appointed.

MR. MARGHOTTI: And there is no question but what he was appointed trustee, but how it was done is the question.

Q. Did you and Donald Johnson and Donald Reifsnyder ever meet together in connection with the Central Forging case with the exception of the time that you say you met him at the country club on April the 26th?

A. Did we ever, the three of us, except that time?

Q. Except that time in connection with this Central Forging matter.

A. Previous to when or after what date?

Q. Previous to April the 26th, 1942.

A. I don't remember any such meeting, no.

Q. All right. Was the check, the $3,000 check, was that

(T. 606):

ever discussed with Donald Johnson?

A. Not by me or in my presence. That is, the check itself; the proposition surrounding it. I have testified I did.

Q. I am asking you about the check.

THE COURT: He said the check itself was never discussed by him or in his presence.

THE WITNESS: I meant the check.

Q. The check. Did Donald Johnson and his brother, Miller Johnson, have a conversation with you at or about the time that you began to appear before the Grand Jury?

A. I don't know just when that would be. They both

came up to my home, as a matter of fact they had dinner, I invited them to stay for dinner.

Q. And that's the instance—

THE COURT: Let me get this clear. Did they come to your home as the result of your invitation or did they go to your home, and after they arrived did you then invite them to remain for dinner? Do you recall?

THE WITNESS: I can't recall.

Q. Anyhow, they had dinner?

A. Yes, they came up to my home in Clarks Summit and I invited them to stay for dinner.

Q. Very well. Mr. Michael, do you remember both of them asking you about the investigation and your appearance before the Grand Jury?

A. I hadn't appeared before the Grand Jury at that time.

(T. 607):

Q. Well, you knew you were to appear?

A. No, I don't think I had a subpoena or knew anything about it at that time.

THE COURT: Were you apprehensive?

MR. MARGIOTTI: That is what was coming next.

THE WITNESS: Not particularly at that time.

Q. Not particularly. Somewhat?

A. What's that?

Q. Somewhat? Somewhat apprehensive?

A. Well, that's a question. I can't quite tell you.

Q. Isn't it a fact—

THE COURT: Let me ask you this: As you recall it you don't know that you had yet appeared or had yet been subpoenaed?

THE WITNESS: I don't think I had even been questioned by the FBI at that time. I am not sure.

THE COURT: Well, did either Miller or Donald or both discuss with you the probability or the possibility of your appearing before the Grand Jury?

THE WITNESS: Yes, and as I recall, Miller had appeared before the Grand Jury that day and he stated he had been down to the Grand Jury that day.

THE COURT: All right.

Q. All right. Mr. Michael, isn't it a fact that you had already appeared and weren't you asked by these gentlemen—weren't you discussing your appearance and didn't they ask.

(T. 608):

you what there was to it, what there was to the investigation, and didn't you answer, "Well, they are trying to get me to say that I gave money to you—" to Don "—or money to your father, or that Reifsnyder gave money to you or to your father, but I cannot say that, it isn't the truth, I would not say it and anyhow this is nothing but politics, they are after your father and they are after you." Did you say anything like that, the substance of that? Maybe I haven't used the exact language.

A. Well, you have asked a long question covering considerable ground and it couldn't have taken place because I know that Miller Johnson and Donald had entered my home previous to the time I testified, I am quite sure

of that and I have a recollection, as I sit here and think, how to identify that, because over the appearance of Boris Kostelanetz I remember Miller saying—

Q. Just a minute.

THE COURT: No, let him go on, we have got into this. I want to know what happened.

MR. MARGIOTTI: If the Court please, I have no objection to what happened but I don't want him to talk about things that have nothing to do with this.

THE COURT: Well, Mr. Kostelanetz was associated with Mr. Goldschein.

MR. MARGIOTTI: I understand that, but it is a question of what was said in that question. I am not (T. 609); opening the door to the entire investigation.

THE COURT: No, but he wants to fix it in his mind and I will let him fix it aloud. Go ahead.

THE WITNESS: I remember Miller Johnson saying in regard to Mr. Goldschein and Mr. Kostelanetz that Mr. Kostelanetz left and there was another man associated with Mr. Goldschein, I have forgotten his name now—

THE COURT: Mr. Maddrix.

THE WITNESS: That's right, Maddrix.

MR. PRATT: Maddrix.

THE WITNESS: So that when I appeared before the Grand Jury Mr. Kostelanetz was not here, he came back on the case much later. So if Boris Koste-

lanetz, as Miller stated, was questioning him, then that had to be previous to my appearance because at the time I came here it was Goldschein and Maddrix.

THE COURT: All right. Now come to the second part of the question. At this conference or meeting at your home did you make any such statement as Mr. Margiotti outlined, and regardless of when it occurred?

MR. MARGIOTTI: That is exactly what I was going to ask.

THE WITNESS: No, I couldn't have made any of those statements because I hadn't appeared before the Grand Jury at the time they were at my home.

(T. 610):

Q. Well, whether you appeared or not, did you make any such statements, that there was nothing to the investigation, that it was a question of politics and that they were after his father and them, or something to that effect? Was anything like that said?

A. I can't remember what we talked about, I know they talked about their appearance.

Q. Tell me, did you make such a statement?

A. I don't recall that I ever did.

Q. That answers it. Did you ever give Don Johnson any money, either from the Edington trusteeship or from the Central Forging case?

A. No, not myself personally.

Q. No. Did you ever see anybody else give Donald Johnson any money from either of those two trusteeships?

A. No.

Robert Michael—Redirect

(T. 611):

Redirect Examination

BY MR. PRATT:

(T. 621):

Q. Are you able to state how you fixed the date of February 13th as being the occasion when Donald Reifsnyder first spoke to you about the proposal of giving Donald Johnson a sum of money?

MR. MARGIOTTI: That question is objected to because it has already been gone over and the witness has testified in chief. The only question I asked him about it is "How you fix the date of that telephone conversation," which was the 19th. If it means anything to you, I will withdraw my objection.

MR. PRATT: The relation is so close—

(T. 622):

MR. MARGIOTTI: Go ahead.

A. There are many ways of determining that date, as far as that goes. One of them is in our record where we filed for an expense account, it shows we went down there on the 13th. The second one is—

Q. You went where?

A. Where? To Harrisburg.

Q. In Harrisburg?

A. Yes. The second one would be we always went on a Friday and the telephone call came after the trip, or Friday came—the first Friday before the 19th was the phone call. You can take it either way and it adds up to the same.

Q. Now, when did you see this exhibit, this—

MR. MARGIOTTI: I have it here. Is this the one you want?

MR. PRATT: Yes.

Q. When did you first examine this telephone bill, which is Exhibit No. 15; after the occasion was brought to your mind, or after you gave the information that on the 13th of February you had had this talk with Mr. Reifsnyder? When after that did you refer to this telephone bill you have in your hand?

A. Well, I don't know. That was a few weeks ago.

Q. Well, can't you state it with reference to some of the events in this case?

A. Well, at the time I examined that file, I asked for the file to refresh my memory and it was shown to me. (T. 623):

Q. How long ago was that?

A. Oh, I would say a couple of weeks.

Q. And was that the first time you had examined this telephone bill in connection with these various transactions?

A. Oh, I think it was shown to me in the contempt proceedings.

Q. You didn't testify in the contempt proceedings?

A. No, but I had a chance to examine some of the exhibits.

THE COURT: His counsel and he may have been shown it. Aren't we making too much over this, how he fixed dates? After all, here is a case in which there is considerable correspondence, there are papers for identification in court, all bearing dates and directed to

particular events. Now, it wouldn't be hard for any person having that available to at least approximate with reasonable certainty the dates in question. I mean, no one suggests that this man is performing a memory feat. He has all these papers, files and letters and what-not.

Is there anything further, Mr. Pratt?

Q. I want to direct your attention again, Mr. Michael, to the exhibits, these yellow sheets, Exhibits S-B and S-C. I particularly call your attention to the initials that are on these pages and whose handwriting—in whose handwriting are those initials?

MR. MARGIOTTI: That is objected to for the (T. 624):

following reasons: First the witness is not competent to testify; second, it has already been gone over in the Government's case in chief.

MR. PRATT: I want to clarify these initials that appear on these sheets. Whether it was overlooked in the direct examination of the witness, I don't recall. In fact I don't recall the exact state of the record.

MR. MARGIOTTI: The witness has testified positively he knew nothing about the writing on there, all he knew was about the figures, they were figures while they were riding along in the dark, but he knew nothing about the actual writing, they were talking about the figures that are on that paper. That is what he said.

MR. PRATT: Now, if the Court please, he has encircled in his previous testimony, with blue pencil, the figures and writing on this exhibit, No: S-C.

Colloquy

MR. MARGIOTTI: That is true, Mr. Pratt. But he subsequently testified that all he knew was that they were talking about the figures, he could tell nothing about the writing.

MR. PRATT: That isn't my understanding of the testimony, if the Court please, and I should like to clarify it.

THE COURT: Do you know in whose handwriting the writing is?

(T. 625):

THE WITNESS: I assume it to be Mr. Reifsnyder's.

THE COURT: No, do you know?

MR. PRATT: Wait a minute.

THE WITNESS: To the best of my knowledge—

MR. MARGIOTTI: Wait a minute.

MR. PRATT: Wait a minute.

MR. MARGIOTTI: The witness, if your Honor please, has first said he assumes it and then he was going to say, "It appears," and now he voluntarily says, "To the best of my knowledge." First qualify the witness if it is material.

MR. PRATT: If the Court please, if I may have his answer.

THE COURT: No, I think Mr. Margiotti is right, if you are going to let him express an opinion I think you ought to qualify him as to his knowledge of the person whose handwriting it is.

MR. PRATT: Very well.

Q. I ask you this question, Mr. Michael, in connection with your acquaintance with Donald Reifsnyder, which you say extended over some years. Did you ever see him write?

A. I did, yes.

Q. And on how many occasions have you seen him write?

A. Oh, on innumerable occasions.

Q. And have you seen him write with a pencil?

A. I have.

(T. 626):

Q. And from your having seen him write, are you familiar with his handwriting?

A. Yes.

Q. Now I will ask you whether the handwriting on this exhibit No. 8-C, the handwriting opposite the various figures, whether you can tell whether that writing is in the handwriting of Donald Reifsnyder.

A. I say that is in the handwriting of Donald Reifsnyder.

Q. Now referring to the writing—

MR. MARGIOTTI: Now, Mr. Pratt, please.

THE COURT: I am going to ask Mr. Pratt not to read it because there is pending before me a motion addressed to this exhibit and I would prefer that you not read it.

MR. PRATT: I was going to call attention to specific initials and ask him to interpret them.

THE COURT: That is what I was fearful about, that is the very thing I wanted to avoid.

MR. MARGIOTTI: Exactly.

THE COURT: You see, if the motion prevails and I must instruct the jury, I don't want the exhibit to be in such a position that I can't dispel from their minds any motions concerning it. After all, if the exhibit is to be stricken ultimately the defendant shouldn't be prejudiced by the fact that it was here.

MR. PRATT: There is no further redirect.

(T, 627):

Recross Examination

BY MR. MARGIOTTI:

Q. Mr. Michael, in his telephone bill, which refers to a call to Middleburg on the 19th, there is a charge of 70 cents for that telephone call, 10 cents for tax. You say the day before you tried to get Don Johnson and couldn't get him. I notice in the same bill there is a charge on the 18th to Middleburg for 85 cents; the day you couldn't get him the charge is larger than the day you got him. Look at that.

A. Yes. But I didn't say I didn't get his office.

Q. Well, do you mean that you talked to his office and talked 85 cents worth to somebody in the office?

A. I couldn't go on and define a bill that has been rendered.

Q. All right.

A. But I talked both places both days.

Q. O. K.

(T. 768):

HARRY S. KNIGHT, called and sworn in his own behalf, testified as follows:

Direct Examination

BY MR. LEVY:

Q. Mr. Knight, will you give your full name?

A. Harry.

(T. 769):

S. Knight.

Q. Where do you live?

A. Sunbury, Pennsylvania.

Q. And what is your age, please?

A. A little more than 77 and a half.

Q. Where were you born?

A. Watsontown, Pennsylvania, Northumberland County.

Q. Where is that in relation to Sunbury, Pa.?

A. Beg pardon?

Q. Where is that in relation to Sunbury, Pa.?

A. 18 miles north of Sunbury, midway between Sunbury and Williamsport. In Northumberland County.

Q. And have you lived there all these 77 years?

A. I have lived in Northumberland County, Watsontown and Sunbury, all except my school days, and about two years in Williamsport while I was reading law.

Q. And where were your school days spent?

A. In Kingston. I was graduated at Wyoming Seminary in 1888.

Q. And did you take any further education outside of Wyoming Seminary?

A. I had no further academic or scholastic education. I read law in a law office in Williamsport.

Q. And you were admitted to the Bar in Pennsylvania?

A. I was admitted to the Bar in Williamsport, and thereafter to the Supreme Court of Pennsylvania, and at about the same time to the Bar of Northumberland County, Pennsylvania, and since then have been admitted to many Bars throughout

(T. 770):

Pennsylvania.

Q. In whose office did you study your law?

A. H. C. and S. T. McCormick, in Williamsport.

Q. Now, Mr. Knight, as a lawyer are you a member of any of the legal Bar associations?

A. I am.

Q. And will you tell us what those Bar associations are?

A. I am a member of the Pennsylvania Bar Association, the American Bar Association, the American Law Institute, and Bar Association of the City of New York.

Q. Mr. Knight, have any of those Bar associations honored you in your profession?

A. They have.

Q. Will you tell us what offices, if any, you held in any of those Bar associations?

A. In the Pennsylvania State Bar Association, I have been President of that association, in 1926 and '27; I have served on practically all of the committees in the State association of any importance whatsoever from time to time; in the American Bar Association, which is a national association, I have been Secretary of that association for nine successive years and am now Secretary of

that association and have been nominated for the tenth successive year. I have also served on the Board of Governors of the American Bar Association, which is the governing body, for 13 successive years.

Q. Whether or not you have also been honored by appointments by any courts of this State?

A. Yes, I have.

(T. 771):

Q. Will you tell us what courts and what appointment, please?

A. For nine years I was a member of the Board of Governance of Pennsylvania, appointed by the Supreme Court of Pennsylvania, which is the disciplinary board to discipline the lawyers and hear complaints in the State of Pennsylvania. I resigned from that; I have been appointed by the Supreme Court on a Committee on Rules, the Supreme Court of our own State, serving at the present time as Chairman of the Committee of Rules of our own local Bar to revise them and harmonize them with the State rules.

Q. Now, Mr. Knight, when were you admitted to the Bar?

A. I was admitted to the Bar in Williamsport in October, 1891; I was admitted to the Bar in Sunbury, my present home and the place of my office during most of my active practice, in April, 1894.

Q. And have you practiced law ever since 1891?

A. I have practiced law, with the exception of one year out on account of ill health at the very beginning, I practiced law constantly since September, 1891.

Q. So that you are a practicing lawyer for a period of 54 years?

A. Less that one year, which would be 53 years a practicing lawyer.

Q. And you have practiced your profession in Sunbury for all except one or two years?

A. That is true.

Q. Can you give us, generally, an idea of the extent of

(T: 772):

your practice?

THE COURT: What do you mean, the nature of it, Mr. Levy?

MR. LEVY: Well, the nature of it, the places where the practice was had, such as appellate practice or trial practice, et cetera. I just want to get a very brief sketch of that, if your Honor please.

A. During my practically 52 years of active practice in Sunbury I have been favored with a very large and what might be called extensive practice. I have practiced a great deal in the local courts of my own county, both in the courts and carried on an extensive office practice with assistants in my office. I had a number of young men that have gone through my office. I have practiced in the —in a number of counties surrounding Northumberland County, such as Lycoming, Dauphin, Union, Snyder, Montour, Columbia, which are immediately adjoining, and a number of others. I have acted for a number of years as general counsel for certain interests which had their headquarters in an adjoining city and made frequent trips to Philadelphia and New York by reason of that practice. I have been engaged in what might be called a very general

country practice. I have practiced a great deal before the Supreme and Superior Courts in our own State of Pennsylvania and have carried on quite an extensive practice in the Federal Courts of the Middle District of Pennsylvania and some little,

(T. 773):

not much, in the Eastern and a very little bit in the Western Districts of Pennsylvania in the Federal Courts. That has been infinitesimal, the most of it has been in our Middle District of Pennsylvania.

Q. Did you ever appear in appellate practice before the Circuit Court of Appeals for this District?

A. Very frequently.

Q. Now, Mr. Knight, you told us you began the practice of law in 1891. Will you tell us the date of the Bankruptcy Act which was in force and effect in 1938 when the Central Forging Company was put into reorganization proceedings under Section 77B?

MR. PRATT: If the Court please, that is hardly a matter for the testimony of Mr. Knight. I would think it is irrelevant to this inquiry.

MR. LEVY: It is only preliminary and only to how the extensive knowledge that this man had of that Bankruptcy Act, which was passed in 1898, seven years after he began his practice.

THE COURT: Maybe the Government will agree that he has an extensive knowledge of the Bankruptcy Act.

MR. PRATT: We are perfectly willing to agree to that, if your Honor please.

THE COURT: Date wouldn't show knowledge but if you intend to show his extensive knowledge of the Act

(T. 774):

maybe the Government will agree that from his extensive practice—

MR. PRATT: I will agree that he had an extensive practice under the Act and was familiar with its provisions.

THE COURT: You want anything more than that, Mr. Levy?

MR. LEVY: No, I don't, I just wanted to bring out from the witness the fact that he had begun a practice of law before the Act was even passed.

THE COURT: I think that is apparent.

MR. LEVY: All right.

A. Well, if it is important, Mr. Levy, I might say that I filed the first—

MR. PRATT: I object, if the Court please, this is not in response to any question.

THE COURT: No, I will let him answer it.

Q. Answer it, please.

A. I was just going to say, as a matter of historic knowledge, that when the Act of '98 was passed, the Bankruptcy Act, this territory and the territory of Sunbury, in which I was then living, was in the Western District, we didn't have a separate Federal Court here in Scranton and Harrisburg and the different places. I had, rather, the distinction of filing the first petition in bankruptcy that

was filed in the Western District at Pittsburgh (T. 775):

from Sunbury in '98.

Q. Mr. Knight, now coming down to 1938, whether or not you were consulted by anybody in reference to the Central Forging Company's business.

A. Yes, I was.

Q. Will you tell us who you were consulted by?

A. As near as I recollect it it was in either the latter part of August or the very early part of September, 1938. I was called by a lawyer in Bloomsburg, which is about 24 miles from my home and is the County Seat of Columbia County, namely Mr. A. W. Dewey, whether I could join him in representing some interests in Columbia County and would come to his office. I went to his office and there, for the first time, met Mr. Fred Long, Mr. Max Long and Mr. Fenner, and was engaged to represent them and a company in which they were directors and officers, namely, the Maxi Company.

Q. That is the Maxi Manufacturing Company?

A. Maxi Manufacturing Company, that is right.

Q. In the course of the proceedings for which you were engaged to represent these gentlemen did you do any legal work?

A. Yes, at that time I was particularly engaged because there were proceedings in the County Court, or the Common Pleas Court of Columbia County, which was in Bloomsburg, against the Maxi Manufacturing Company, Mr. Fred Long, Mr. Max Long, Mr. George Fenner and some others who were directors of the Maxi Manufacturing Company, and I think had been

(T. 776):

directors of the Central Forging Company, and I was engaged to join Mr. Dewey in filing the proper papers in answer and defending this case in the local County Court.

Q. I take you now to the action in the Middle District of Pennsylvania, the reorganization proceedings filed in the Middle District of Pennsylvania. Did you have anything to do with the filing of that petition?

A. I did not.

Q. When the petition was filed were you engaged to take any part for your clients?

A. I took no part in the proceedings in the Federal Court in pursuance of the petition in reorganization that was filed in the Federal Court before Judge Watson until Judge Watson, after hearing considerable testimony in which I was not interested and not a party, other lawyers having taken that up, in fact I knew nothing about it until it was over, until he had decided the case in favor of the petition, and until the people who were against the petition, the interests of Dr. Buckley and his family, represented by Hervey Smith, took an appeal to the Circuit Court of Appeals, then, for the first time, I was brought into this federal case.

Q. And do you recall, or do you have a recollection when it was done?

A. Well, that was done some time, my best recollection is, in October or November, 1938. I couldn't be too certain about those dates, it is just a little bit far back.

(Exhibit D(K)-8 marked for identification.)

(T. 777):

Q. I show you an application for allowances of com-

pensation and disbursements for attorney for petitioning creditors, marked for identification Defendant's Exhibit No. D(K)-8, and ask you if you can refresh your recollection from that paper.

A. The paper states I was first consulted on September 16, '38.

Q. By the way, what is that paper that I just gave you?

A. This is my application to the Federal Court for an allowance of fees for having represented the holders of bonds of the Central Forging Company to the extent of $21,300, and also the same people being stockholders of the Central Forging Company and certain of the same people being common creditors of the Central Forging Company.

Q. Will you tell us when that paper was written?

A. This paper is marked "Filed" by the Clerk of this court "January 24, 1942."

Q. And is there anything inside of the application—by the way, is the application signed by you?

A. The application is signed by me and sworn to by me with the two separate affidavits required under the Reorganization Act.

Q. Will you tell us when it was sworn to by you?

A. January 20, 1942.

Q. Was that about the time that you made up this application?

A. Yes.

Q. And did that contain the services which you rendered

(T. 778):—

up to that point?

A. It does contain an itemized list of the services that I rendered between September, '38, and January 24, '42, and also an itemized list of my cash expenditures in connection with my services in traveling, telephone and so forth.

Q. And was there any action taken by the court upon that application?

A. Yes.

Q. And was the amount of the fee that was directed to be paid to you by the court in its order of April 16, or April 18, whether or not it was based upon that application?

A. It was.

Q. And whether or not there was any action taken upon that application before the Special Master?

A. Yes.

Q. Was the application referred to a Special Master?

A. The application, when presented originally, was referred by the Judge to the Special Master, Crolly, and the Special Master made his reports and recommendations to the Judge concerning whether or not I was entitled to it and shouldn't receive it, and then the Judge made the final order.

Q. And, Mr. Knight, does that truly reflect all of the services that you had rendered up to January 20, 1942, and the expenses that you had expended?

A. Mr. Levy, it reflects the expenses as we kept them on our books and it reflects the services as near as we could keep account of them in conducting a busy practice and keeping memorandums

(T. 779

each day on a desk book of what we did.

MR. PRATT: If the Court please, I object to this

because it is entirely irrelevant to the issues in this case.

MR. LEVY: If your Honor please, the Government has shown now that Mr. Knight received a check for $5,500 for services, it was upon a petition dated January 20, 1942. My only purpose is to show that the receipt of the moneys which he had received for these services were performed by him and had nothing to do with any arrangement between Mr. Knight or Mr. Reifsnyder or Mr. Michael.

MR. PRATT: There is no claim by the Government—

THE COURT: Yes, I don't think there is any contention that is so.

MR. LEVY: If there is no claim I'll stop questioning on this phase of the case.

THE COURT: Suppose we take our recess before Mr. Levy gets into another phase. The witness may step down and the jury retire.

(A short recess was taken.)

(T. 780):

BY MR. LEVY:

Q. Now, Mr. Knight, who was the first trustee appointed by the United States District Court?

A. Walter Compton of Harrisburg.

Q. And you have already told us that this case was in the hands of Judge Watson. I ask whether or not there was a trustee for the debtor company at that time.

A. No.

Q. Who had charge of the reorganization proceedings at that time? That is, who had charge of the assets in the reorganization proceedings?

A. Oh, the debtor, the people of the—

Q. Central Forging Company?

A. No, I would like to correct that. A receiver who had been appointed by the local Columbia County Court was in charge at that time.

Q. And can you tell us about when the case was transferred from Judge Watson to Judge Johnson?

A. My recollection is that it was in the early part of February, 1939, when the Circuit Court of Appeals handed down its decision and subsequently its mandate referring it back, and that Judge Watson at that time was out of the district holding court, as I recollect it, in some other state and Judge Johnson, in his absence, took charge of it.

MR. PRATT: I don't see the relevancy of this. I object.

THE COURT: How is it relevant, Mr. Levy? (T. 781):

MR. LEVY: If your honor please, I think this jury is entitled to have the entire background of this whole case.

THE COURT: Well, I agree that they should have sufficient of it to be enabled to follow the evidence intelligently, but how it was transferred from Judge Watson to Judge Johnson doesn't seem to be relevant to me. I don't know, it may be on some theory of your defense. If it is I will take it. I don't want to unnecessarily hamper you, you understand.

MR. LEVY: I understand.

THE COURT: But I don't want it to start with the Civil War, either.

MR. LEVY: I don't want, if your honor please, to raise or disturb any defense that might be had by anybody else in this case, that is not my purpose.

THE COURT: No, I understand.

MR. LEVY: But the remarks of your honor at the time that Mr. Michael was on the stand, inferences to some of the talk between Mr. Michael and other defendants brought forth remarks from your honor which indicated that that may have been the beginning of a conspiracy, not at that time but in the month of December of 1941. I want the jury to have all of the facts, so that there can't be a conclusion or an infer-
(T. 782):
ence. I want the court to have all the facts, so there can't be an argument of a conclusion or an inference from the transfer from Judge Watson to Judge Johnson of this case.

THE COURT: I don't know that anyone has drawn any inference from the fact of the transfer.

MR. PRATT: If the court please, we have, it seems to me—

THE COURT: In fact, I don't know that we have gone into this transfer until now.

MR. PRATT: We have a very very narrow issue in this case, it relates to $3000, a part of the consideration for the sale to Maxi Manufacturing Company of the

so-called loose assets, and it seems to me that in getting away from that issue will not only result in confusion but will result in a fast wasting of the time of the court and jury.

MR. LEVY: For two full days he had Mr. Michael on the stand talking about the early history of this case, about the first plan of Mr. Compton's, he brought all of this out, he attempted to tell this jury in his opening remarks for over an hour and a half this very proposition, and yet it becomes a very narrow issue when we try to present to the court and jury all of the

(T. 783):

facts in the case.

MR. PRATT: Counsel misrepresents the extent, not only in time, of my opening statement, he misrepresents the character of my examination of Michael. The only thing that was said about this first plan of reorganization was that it was filed and rejected by the creditors, and that was the end of it so far as there was anything in the Government's case was concerned.

MR. LEVY: And he gave—

MR. PRATT: It doesn't relate to the issue in this case.

THE COURT: As I recall Michael's testimony, he didn't know anything about its earlier history except there was a plan and it was rejected and he replaced Mr. Compton. So why argue about that, gentlemen? The issue before me is whether or not this testimony concerning the transfer from Judge Watson to Judge

attempted to draw any inference that would be adverse to anybody, that both of them were judges in the court with equal authority and jurisdiction and I don't know that there was anything wrong in transferring it from one judge to another.

MR. LEVY: It is only preliminary, if your honor please, and I am willing to stop at this point.

(T. 784):

THE COURT: I am willing to let you go into the preliminaries but let's not try the earlier matter unless it is relevant to your defense.

MR. LEVY: If your honor please, I am perfectly satisfied with what the court has said about it.

THE COURT: All right.

BY MR. LEVY:

Q. Now, Mr. Compton, as trustee, filed a plan of reorganization under Chapter X.

A. He did.

Q. And whether or not you assisted in the formulation of that plan?

A. I gave some assistance to Mr. Compton.

Q. And whether or not that plan was accepted or rejected by the bondholders and creditors?

A. It was rejected.

Q. Now will you tell us, briefly, not extensively, what the difference between that plan and the present plan was? Just a few words.

MR. PRATT: I object to that.

THE COURT: Are both plans here?

MR. PRATT: They are both here in evidence.

MR. LEVY: Are they in evidence?

MR. PRATT: They are, yes.

THE COURT: Well, if they are not, and if it's important, we will make them part of the evidence. At least the court's file is here and available, I hope.

MR. LEVY: Yes, if the first plan is here and in (T. 785):

evidence, I am perfectly satisfied to go ahead with my examination.

THE COURT: Can you tell us, briefly, Mr. Knight, what the substantial differences were?

THE WITNESS: I can.

THE COURT: What were they?

Q. What were they?

A. The Compton plan provided, principally, to give the bondholders and the common creditors preferred stock of the Maxi Company under one option, the bondholders could have 15% in cash under certain conditions, but aside from that they would get not cash but stock, preferred stock, and some common stock in the Maxi Company.

Q. And the present plan of reorganization, that is, the revised plan for reorganization by Michaels?

A. That provided that each bondholder of the Central Forging Company should receive for each $1000 bond a $200 bond of the Maxi Company which was retireable or cashable within thirty days. So that the result was that they would get 20% of the par value of their bond in

cash in 30 days, and each common creditor was to receive bonds of the Maxi Company to the amount of 5% of the face of their claim without any interest, which was also cashable within the 30 days.

Q. Now, the Compton plan was rejected, you told us.

A. That is right.

Q. And will you tell us how soon thereafter Mr. Compton
(T. 786):
retired as trustee.

A. I cannot give you the date of the Compton plan. The record would show that, but my best recollection is that it was sometime in the middle of 1941. Mr. Compton retired as trustee on December 31, 1941.

Q. And will you tell us who operated the business, that you know, under Mr. Compton as trustee.

A. Mr. Fred Long, Mr. Max Long and Mr. Homer Davis, respectively, looked after the mechanical end, the first two named, and the office end was looked after, at least under the general supervision of Mr. Davis, employed by order of court.

Q. Now, on January 1, 1942, Mr. Michael took charge of this trustee succeeding Mr. Compton.

A. That's right.

Q. When was the first time that you knew of this successor trustee?

A. By hearsay, I probably knew it very soon after he was appointed and called at the plant.

Q. Did you find out later directly?

A. Yes, Mr. Michael and —

MR. PRATT: Now, if the court please, he has an-

swered the question, and the rest, obviously, is not responsive.

THE COURT: No, I will let him complete his answer.

Q. Complete your answer.

A. Yes, January 23rd, as I recollect it, Mr. Michael and Mr. Reifsnyder called at my office and stated that they were respectively trustee and lawyer for the trustee of the Central Forging Company. That
(T. 787):
is the first I met either of these gentlemen.

Q. Did you ever know them before?

THE COURT: Just a moment.

MR. LEVY: Pardon me.

THE COURT: May I ask when that was, again, Mr. Knight.

THE WITNESS: My best recollection is January 23rd, and the letters would ratify that.

THE COURT: At or about the time these letters, or the correspondence was first opened between you, is that right?

THE WITNESS: Just before the correspondence.

THE COURT: Just before that?

THE WITNESS: Yes.

THE COURT: All right.

Q. Did you ever know these gentlemen before that?

A. Never before that.

Q. Had you ever met them before that?

A. I never met or seen either of them or had I heard of them, except a few days or a week before they were appointed.

Q. Now, Mr. Knight, will you tell us the conversation that took place between you and Mr. Reifsnyder and Mr. Michael on January 23, 1942.

A. These gentlemen called at my office in Sunbury and after introductions they stated, and when I say "say" I should state that my best recollection is that (T. 788):

most of the conversation on their part was conducted by Mr. Reifsnyder, but always in the presence and the hearing of Mr. Michael, their statement was that they would like to ascertain if some plan could not be worked out whereby the Maxi Company would take over the Central Forging Company, stating that it had been going on for a long time, that the Longs were really managing both plants, one of them for the trustee and one of them with manufacturing for the Maxi Company, that they were both necessary requisites to perform different processes on the products that were being put out and put up a general argument that the plants were so related that some plan should be worked out so that the Maxi Company should have that plant. In talking about how it might be done and how much money it would cost to do it, and that they thought from the conversation they had with the Long family at Catawissa that they might be interested and they were told to come down and talk to me as their counsel, after talking over some figures and how much it would possibly take to interest the creditors of the Central and get them to consent to any plan of taking over

we parted with my promise that I would see the officers of the Maxi Company and ascertain whether they would be interested in taking it over in some form, and how much they would be willing to pay for it.

Q. Now, how long a time were they in your office on that occasion?

A. That's been three and a half years ago. Re-(T. 789):
freshing myself from my recollection, possibly some notes, I would say they possibly had been there a couple of hours, at least, it couldn't have been done in any less than that.

Q. As a result of that conversation what did you do?

A. I made a trip to Catawissa and met a number of directors of the Maxi Company at Catawissa, including the Long family.

Q. Now, without telling what the conversation was between you and the Long family what did you do pursuant to that conversation?

A. I wrote a letter to Mr. Reifsnyder, dated January 29, 1942.

Q. Now, Mr. Knight, I show you Government's exhibit G-2-A and ask you what that paper is.

A. That is a copy of a letter which I wrote to Don Reifsnyder, dated January 29, 1942, and was my office copy and taken from my files by the government agents on August 31, 1944. I want to correct that, "it was taken from my files", whether that August 31, '44 is the exact date, because it may have been shortly before that.

Q. You sent the original letter to Mr. Reifsnyder?

A. I did, through the mails, in the usual course.

Q. And this is a carbon copy?

A. That's right.

Q. And was this letter sent pursuant to the conversation that you had with Mr. Reifsnyder and Mr. Michael and your clients?

A. That is correct.

Q. Now, will you tell us, Mr. Knight, what you wrote (T. 790):

to Mr. Michael and Mr. Reifsnyder on that occasion.

A. You mean that I should read the letter?

Q. If you will.

A. It is dated January 29, 1942.

Q. Just one minute, Mr. Pratt wants to object.

THE COURT: Maybe he doesn't, I don't know, but he wants to be heard anyway.

MR. PRATT: It has been read before and I want to conserve time, that's all.

THE COURT: Well, no, don't let us conserve time at the expense of the defendant.

MR. LEVY: That is exactly the proposition.

MR. PRATT: I don't mean that.

THE COURT: I understand. It has been read, but if Mr. Knight and Mr. Levy want to have it read again we will have it read again.

Go ahead.

A. It is addressed "Don Reifsnyder, Scranton National Bank Building, Scranton, Pennsylvania, Dear Mr. Reifsnyder:" headed Re: "Central Forging Company".

"I spent all of Wednesday afternoon with the officials of the Maxi Company to ascertain whether or not they

would be interested in paying anything to acquire the Central Forging Company. There is a decided division of opinion among these people as to whether or not they should invest anything in the Central. Finally it was agreed to make the following

(T. 791):

proposition: (1) That they will pay to you in cash the sum of $17,000 for a clear and unencumbered title to the land, plant, machinery and equipment and all assets of every kind and character except accounts receivable, cash, goods in process, goods finished, and raw material, and will waive its (Maxi Company's) claim to participate in the bonds of the Central Forging Company now held by the Maxi Company, aggregating $21,300. (2) This proposition is made upon the condition that it be promptly accepted, and that the legal machinery to carry it into effect be promptly started. (3) That if accepted, the plant be kept operating as heretofore until it can be taken over by the purchaser; the details of how this is to be done and at the same time liquidate the current assets for the payment of expenses, to be worked out between the Maxi and the Trustee. Maxi now has a plan to do this, which can be submitted at the proper time. (4) If accepted, of course, the Maxi and Mr. Fred Long and Mr. Max Long would continue to co-operate in operating the Central as heretofore. As to the supplies now on hand, it is understood that certain of these supplies will be consumed during the course of operations by the Trustee until a sale and delivery could be consummated. If any of these supplies remain unused at the time of the consummation they are to be included for the sale price. If at the time of the consummation there is any inventory on

(T. 792):

land, the purchaser will arrange to take it over at cost to the Central Forging Co. This in addition to the purchase price above mentioned. Our calculation is that the amount that we would pay in would be sufficient to pay to the bondholders, outside of the bonds held by Maxi, a dividend of 20 [illegible] and would leave over 5 to 8% to pay on the unsecured creditors, in addition to all of the expenses. The audit was not completed when I was in Catawissa. From the work sheets Mr. Davis furnished the following statement of current assets and current liabilities: Current Assets, Accounts receivable $21,812.69, cash in bank $123.14, inventory," itemized as follows: "Supplies $5,054.21, In Process $13,947.97, Finished $6,393.49, Raw Material $5,290.94," or a total inventory of $30,686.61, which added to the accounts receivable and cash in the bank, which I have just recited, makes a total of $52,376.16.

MR. PRATT: Just to make a correction: Cash in bank was an overdraft, was it not in the statement?

THE WITNESS: I stand corrected, Mr. Pratt, so it was. So I think it would be a subtraction, so I think the total reflects a subtraction; the total is $52,376.16 I stand corrected. Thank you, Mr. Pratt.

A. (Continuing): "Current liabilities: Assigned accounts $9,690.16, Accounts payable $8,509.34, Social Security Tax $1,353.83, Pay Roll $3,397.72," net liabilities total carried out as $22,953.05, subtracting one from the other, it follows

(T. 793):

in the letter, "Net current position January 1, 1942, $29,423.11."

"I am informed by Mr. Davis that upon a collection and liquidation of these assets they would produce the amount set out in the statement, so that there would be no shrinkage. I am informed, also, that while this statement is of January 1st, 1942, that there would be no material difference in the current position from month to month over a period of a few months—that is, there might be in the next month less inventory but it would reflect itself in greater receivables; and the receivables might become less, which would reflect itself in the cash, and cash used to pay the payables, so that the net would remain about the same. The printed plan of Mr. Compton shows there are priority claims of $1,080. There is payable as expenses to what might be called the Beckley or Smith crowd, allowed by the Federal Court $2500; Add to these last two items, a very rough estimate of the expenses, we would have a total of not to exceed $20,000 or $21,000; so that all of these could be paid out of the net current without even using any of the supplies, and have a few thousand dollars left. I am strongly inclined to the opinion that the only procedure to be followed in order to accomplish the sale as above proposed would be to have a prompt adjudication in bankruptcy, and then a petition to sell at private sale, and before this it would be necessary,

(T. 794):

or at least expedient to agree with the Bondholders' Committee that they would accept this amount, or approximately the amount, and have them agree by a power of attorney to vote for Mr. Michaels as Trustee, at least insofar as their claims are unsecured, and then have Mrs. Beckley and the other small unsecured creditors agree to a sale such as

above and to vote for Mr. Michaels as Trustee. So far as any claims which the Maxi Company could control are concerned, I would be willing to have them vote for Mr. Michaels as Trustee. I am laying this before you promptly as per my promise so that if it appeals to you, you can take it up promptly, which will be necessary under the offer. I shall be absent from my office on Friday and Saturday of this week, and on Wednesday and Thursday of the following week. If at any time you desire to confer with me you had better call me on the telephone before coming here. Very truly yours, Harry S. Knight." And the post script, "I enclose a carbon copy of this letter which you may want to hand to Mr. Michaels."

Q. Now, Mr. Knight, recollecting what is set forth in Government's exhibit 2-A and remembering that the plan of Mr. Compton's was rejected, did you have in mind in writing this letter a sale of the assets of the Central Forging Company and a purchase by the Maxi Manufacturing Company thereof?

A. That is what I had in mind at that time.

Q. Now, then, when was the next time that you met Mr.

(T. 795):

Michael and Mr. Reifsnyder.

THE COURT: Well, now, before taking that up maybe this would be a good time at which to adjourn.

MR. LEVY: I think it would, your honor.

THE COURT: If you were going on to another meeting, I am thinking of continuity of testimony so the jurors will be able to follow it.

MR. LEVY: Thank you.

THE COURT: Let the witness step down and the jurors may retire and be excused until tomorrow morning at 10 o'clock.

MR. MARGIOTTI: Before the court adjourns, I have a couple of matters.

If the court please, we have issued a subpoena for Hervey Smith and the Chief Deputy United States Marshal here makes this return: "Subpoena unserved by direction of Attorney Ray Campbell. I called the office of Hervey Smith, Attorney at Law, at Bloomsburg, Pennsylvania, not able to locate Hervey Smith. was informed by telephone operator that information she received from Attorney Smith's office was that he is in the armed services located at Cochran Field, Macon, Georgia." Now, it is going to inconvenience both Mr. Smith and probably ourselves to have him come here for this testimony. We propose to call, and the purpose of our

(T. 796):

calling him is to introduce the testimony which he gave before your honor in the contempt proceedings, which is found on page 276 on direct and 287 on cross examination of the record. What I would like to do in order to eliminate calling Smith, I would like to get an agreement on the part of the government to read his testimony rather than have him come here.

THE COURT: If the government will agree I surely will have no objection but I won't insist that they agree.

MR. PRATT: I haven't the slightest idea of what his testimony is, I have never read it.

THE COURT: No, he hasn't because Mr. Goldscheln tried that case. But I remember Mr. Smith was in the army at that time.

MR. MARGIOTTI: Yes.

THE COURT: He wasn't inconvenienced very much, in fact, he enjoyed the trip home.

MR. MARGIOTTI: Well, you know it is a little expensive, too.

THE COURT: Yes, I understand. If you and government counsel can agree, I have no objection.

MR. MARGIOTTI: You have no objection.

THE COURT: I have no objection, of course not.

MR. MARGIOTTI: Now, if your honor please, I am

(T. 797):

presenting here now a petition on the part of Donald Johnson in which he sets forth the charge in the indictment where Don Reifsnyder is charged as a co-conspirator, that because of his death he is not indicted but referred to as a confederate in the indictment and that Michael, of course, has testified and quoted many conversations alleged to have taken place between him and the said Reifsnyder, and he has also testified to the fact that exhibits G-8-B and G-8-C —well, you know what he testified to.

THE COURT: Yes. But you see, what I am fearful of, as far as your petition is concerned, and I can say this because I have been sufficiently close to this now for 18 months, we take his testimony before the grand

jury, that is surely going to open the door to matters that he stated to agents and others different from his testimony before the grand jury and it will soon cease to be an issue of his credibility and then we will have in this record all sorts of hearsay from other witnesses.

MR. MARGIOTTI: I don't know, judge, what this might lead to.

THE COURT: I am fearful. Suppose you step up here for a moment.

(Discussion off the record at side bar.)

(T. 798):

(The court received petition and held the application under advisement.)

(Adjournment taken to Tuesday, October 30, 1945, at 10 o'clock A. M.)

(T. 799):

Scranton, Pa., Tuesday, October 30, 1945, 10:00 a. m.

Appearances: (Same as previously noted.)

HARRY S. KNIGHT, resumed the stand.

Direct Examination (Continued)

BY MR. LEVY:

Q. Mr. Knight, yesterday, the last question that was asked you was "recollecting what is set forth in Government's Exhibit 2-A," that was the letter you read to the jury, "and remembering that plan of Mr. Compton's was rejected, did you have in mind writing in this letter a sale of the assets of the Central Forging Company and a pur-

chase by the Maxi Manufacturing Company thereof?" And you said, "That is what I had in mind at that time." And then I asked you, "when was the next time that you met Mr. Michael and Mr. Reifsnyder?"

A. On February 13, '42, at my office, both of them called there.

Q. And were they both together at that time?

A. They were.

Q. What was said at that conference?

A. I will give you that as near as I can recollect it. I also recollect that I made a report of that conference to my own clients in a letter dated February 17th, my copy of which was taken from my files by the Government agents and, presumably, is in the
(T. 800):
hands of the Government at the present time.

MR. LEVY: I now ask the Government to let us have the letter of February 17th addressed to the Maxi Manufacturing Company, taken from Mr. Knight's office.

(Handed to Mr. Levy.)

Q. I show you a letter that was just delivered to me, or a copy of the letter, dated February 17, 1942, and addressed to the Maxi Manufacturing Company. I ask you whether you can refresh your recollection from that letter.

A. I can.

Q. Does that letter contain the contents of the conference between you and Mr. Michael and Mr. Reifsnyder on the morning of February 13th, or the day of February 13th?

A. It does.

Q. Now, will you tell us what took place at that conference? Let me ask you, Mr. Knight, does that contain the entire conference?

A. It contains the substance of the entire conference. I wouldn't say that it contains a detailed report of everything that was said and done over a period of a few hours, but it certainly contains the substance of what took place.

Q. Will you read that letter to the jury, please?

A. "February 17, '42

"Maxi Manufacturing Company,"

MR. PRATT: If your Honor please—pardon me—the letter should be in evidence before it is read, I think.

(E. 801):

THE COURT: This letter is not in evidence?

MR. LEVY: I ask that this letter be marked Defendant Knight's Exhibit D(K)-9.

THE COURT: It may be received.

MR. PRATT: What is the number, please?

THE COURT: D(K)-9.

MR. MARGIOTTI: Do I understand it is received in evidence?

THE COURT: Yes, if there is no objection. Maybe defense counsel better look at it.

MR. MARGIOTTI: I haven't seen it, I don't know anything about it.

THE COURT: Maybe you better look at it.

(The document referred to was handed to Mr. Mar-

MR. MARGIOTTI: Your Honor, we have no objection.

THE COURT: All right, let it be received.

(Exhibit D(K)-9 received in evidence.)

Q. Please read that letter.

A. "February 17, 1942

"Maxi Manufacturing Company," my client.

"Gentlemen:

"I spent all Friday afternoon from 12 o'clock until 5:45 with Mr. Reifsnyder, working out some plan whereby you could take over the Central for a price of $17,000 plus the inventory except, however, the item of $5,054.21 of supplies,

(T. 802):

which were to be omitted from the inventory, for the reason that between January 1st and the time when the procedure necessary to take over the plant could be completed,—a period of possibly sixty days—the Trustee would consume approximately half of these supplies, and that then the other half should be turned over to the Maxi without any extra cost, and be included in the price of $17,000 for the fixed assets.

"It developed in the conversation that Messrs. Reifsnyder and Michael had an interview—"

MR. PRATT: Mitchell, isn't it?

THE WITNESS: It is marked "Mitchell," that is evidently an error in typing.

THE WITNESS: Yes. I think you will find that same error some place else in that letter.

MR. PRATT: It should be Michael?

THE WITNESS: It should be Michael, right, there is no doubt about that.

A. (Continuing:) "It developed in the conversation that Messrs. Reifsnyder and Mitchell had an interview with Homes and Wickersham and Smith on behalf of the Beckleys, and that they had every reason to believe that these people would accept 20% on each bond, and 5% on each common claim; that they would follow this up immediately and if they were satisfied that this would be agreeable to the creditors they

(T. 803):

would then institute the proper legal procedure to have the Maxi obtain possession.

"The question then arose whether the Maxi should take possession as of the date that the final order should be made, or as of January 1, 1942, and in the latter case use the figures that appear in the Dobson Balance Sheet of December 31, 1941.

"In view of the fact that the plant in any event was being run by Messrs. Long and Davis, that you were familiar with all of the business that it was doing, it was considered a matter of economy and efficiency if the plant when taken over should be taken over as of January 1st, and that the Maxi Company should then receive all the profits that were made from January 1st on; and, of course, would suffer the loss from that time on, and when it would be taken

everything referring to the Balance Sheet of Dobson including current assets of $54,355.01 and also would assume the Trustee's liabilities of that date of $29,404.26, some of which have already been paid.

"You would then be called upon to pay for the net current assets, whatever they might aggregate at that time, deduct from the inventory, however, for supplies $3,054.21; in other words, by a process of compromise we agreed that Maxi should pay $2000 for supplies which were inventoried at $5,954.21—

(T. 804):

this after a telephone from Homer Davis. With the foregoing exception, assuming that the Maxi is to take it over as of January 1st, the set-up would be as follows:

"Maxi obtains current assets from Dobson's statement	$54,355.01
"Less compromise figure for supplies	3,054.21
"Gross amount which Maxi will receive	$51,300.80
"Other assets shown on the balance sheet of Dobson, less the item of patents	1,644.26
"Gross assets which Maxi will receive	$52,945.06

"Liabilities that Maxi will assume, being the amount shown on the liability side of the Dobson Balance Sheet less the item of interest on notes amounting to $5313.53—"

MR. PRATT: Pardon me; I think you mis-read that item.

THE WITNESS: Well, the very second word, it

MR. PRATT: No, the amount of money, $5313.53.

THE WITNESS: That is what I have. Did I misstate that? Thank you, I will correct it then.

A. (Continuing): "$5313.53" is the interest on notes and it is carried out as $24,190.73.

(T. 805):

"Net amount of inventory for which Maxi will pay the Trustee 28,754.33

"This in addition to the $17,000.

"The total amount that Maxi must then raise when the final order of Court is made and title passed, will be as follows:

"For fixed assets	$17,000.00
"For inventory	28,754.33
"Total	$45,754.33

"If, when the final order shall be made, any profit has accrued since January 1, 1942, it will then be going to the Maxi; if it should result in a loss during this few months, Maxi will suffer the loss. If perchance anything should happen between now and the time that we hope the final order will be made, and the order should not be made then of course the Trustee would take it over, including any profit or loss that might have been made since January 1st.

"On Monday the 16th, Mr. Reifsnyder telephoned me that after he and Mr. Mitchell left my office they went to Harrisburg that night, had an interview with Mr. Wickersham and had agreed upon details, one of the Committee [illegible] and that the plan that had been arrived upon

would be agreeable to them, and that Reifsnyder is now preparing the skeleton of the plan to submit to me.

"This will involve some paper transactions, which will be

(T. 806):

immediately turned into cash merely to comply with certain formalities, and avoid a public sale. I will explain this to you when we can meet in person.

"I feel now that you should make your arrangements to have your money available about April 1st. We might not need it for ten or fifteen days after that date—"

There is another typographical error, it says "ten or fifteen years," that is plainly a mistake.

MR. PRATT: An obvious mistake.

A. (Continuing): "—but it should be available about April 1st, so if we are called upon we will have it.

"It will also be necessary for the Maxi Company to effectuate certain charter formalities or changes in order to carry out the plan, details of which will be explained in the near future.

"Yours very truly."

The original was signed by myself.

Q. Now, Mr. Knight, did you have any other proposition from Mr. Reifsnyder or Mr. Michael or did you submit any other proposition to Mr. Reifsnyder or Mr. Michael that morning?

A. Not at that time, not at that time.

Q. And did you discuss with Mr. Reifsnyder or Mr. Michael, or both of them, anything in relation to the deductions from book accounts, or anything of that kind?

A. In that interview there was absolutely nothing said about deductions from.

(T. 807):

book accounts or anything that could be inferred to mean that.

Q. And at that same conference was anything said to you, or did you say anything to either Mr. Reifsnyder or Mr. Michael in reference to Donald Johnson?

A. Not a word. His name was not mentioned by either Mr. Reifsnyder or Mr. Michael, and I certainly did not mention it, and his name was not before us in any way at all.

Q. Your letter indicates that you had a telephone conversation with Mr. Reifsnyder on February 16th, is that correct, Mr. Knight?

A. That is correct. That was on a Monday.

Q. Does that letter correctly state what Mr. Reifsnyder told you in that conversation?

A. It does.

Q. Now, when was the next time that you heard from either Mr. Reifsnyder or Mr. Michael?

A. I received a letter from Mr. Reifsnyder dated the same day as the date of the letter which I have just read, February 17, but which, of course, reached my office a day later, and in that was enclosed a draft of the proposed plan.

Q. Now, Mr. Knight—

A. That letter—

Q. (Continuing):—do you have that letter here?

A. That letter was taken from my files by the Government agents.

MR. LEVY: I now ask the Government to produce the letter. They produced a letter from Stark, Bissell

and

(T. 808):

Reifsnyder, dated February 17, 1942.

Q. I ask you if that is the letter you received from Mr. Reifsnyder.

MR. PRATT: You don't mean a letter from Stark, Bissell and Reifsnyder, do you?

MR. LEVY: Well, it is on their letterhead and it is Mr. Reifsnyder's letter.

MR. PRATT: Yes, but it isn't Stark, Bissell and Reifsnyder's letter, is it? It is signed by Mr. Reifsnyder, isn't it?

THE WITNESS: Yes.

Q. Mr. Knight, I show you a letter signed, or bearing the purported signature of Don Reifsnyder addressed to you and dated February 17, 1942, and ask you whether that is the letter you refer to.

A. This is the letter to which I refer and was received by me in the regular course through the mails.

MR. LEVY: I now ask that the letter be marked for identification D(K)-10.

(Exhibit D(K)-10 marked for identification.)

MR. LEVY: We offer the letter in evidence.

MR. PRATT: There is no objection.

Q. Now, will you read the letter, please?

THE COURT: Wait a minute, now. I think you have got to bear in mind that the co-defendants might have an

(T. 809):

objection here.

(Exhibit D(K)-10 for identification handed to Mr. Margiotti.)

MR. MARGIOTTI: No objection.

MR. COUGHLIN: I have a copy here. I have no objection.

THE COURT: No objection? Let the exhibit be received.

(Exhibit D(K)-10 received in evidence.)

MR. MARGIOTTI: What is the number of it?

THE COURT: D(K)-10.

Q. Now, will you read that letter, Mr. Knight?

A. "Re: Central Forging Company, Debtor," dated February 17, '42, addressed to Harry S. Knight, Esq., Sunbury, Pa.

"Dear Mr. Knight:

"I enclose the revised plan of reorganization for your consideration and suggestions. In connection therewith I would like to set forth my understanding of this transaction as follows:

"1. The Maxi Manufacturing Company is to take over the assets of the Central Forging Company as of December 31, 1941, conditioned upon the acceptance of the plan. In other words if the plan for some unforeseen reason fails to receive the acceptance of the required number of creditors

of all classes this understanding is null and void. Otherwise the Maxi-

(T. 810):

Manufacturing Company agrees as follows:

"Cash Purchase 17,000.00
"For cash on hand and in bank 12 31 41 133.90
"For finished products as of 12 31 41 6,393.49
"For parts in process as of 12 31 41 — 13,947.97
"For raw materials as of 12 31 41 5,290.94
"For unexpired insurance premiums as of 12 31 41 95.15
"Cash value of life insurance as of 12 31 41 1,199.11
"For advances to salesmen as of 12 31 41 350.00."

Carried out is a total $44,410.56

"Less:

"A total of accrued wages and salaries, compensation insurance and pay roll tax, notes and accounts payable as of 12 31 41 24,190.73
against which is credited Accounts Receivable, assigned and unassigned of as of 12 31 41 23,534.50"

One is subtracted from the other showing a balance of $656.23. It is the carried out under the original $44,410.56, and totalled $43,754.33.

"N.B. In the above consideration we have excluded any amount for factory supplies, tools, fuel and office supplies, (T. 811):

which have no value in liquidation, and which were covered in our telephone conversation of Monday, February 16th.

"2. I would appreciate your securing from Honier Davis an authoritative list of the names of all creditors and stockholders and parties in interest, as set forth in the pro-

posed order of Court, with the amounts thereof and the addresses thereof.

"3. I would also like from Homer Davis a statement of what expenses of the Columbia County receivership have already been paid, and what remain to be paid under the order of the Federal Court allowing same.

"4. You will note in this plan of reorganization that I have withdrawn from consideration the wage claims of Fred and Max Long, contrary to my understanding with you. This is done for two reasons.

"(a) Mr. Holmes of the bondholders' committee has a personal animus against Fred Long.

"(b) Dr. Beckley's brother had an alleged wage claim thrown out, and in talking to him I felt this was a sore point. Inasmuch as it does not amount to a great deal I think that Mr. Long should cooperate in removing all possible irritating features from the eyes of the prima donnas that we have to deal with. I think further that the potential operating profits since January first will more than make up for all items of this nature.

(T. 812):

"5. I likewise enclose the proposed notice to be sent by the First National Bank of Catawissa. You may edit the form as you see fit. However, I do believe that this notice should not be enclosed with the notices of the plan sent by the Trustee but should go out concurrently to the same list of creditors in unfranked envelopes. Inasmuch as I am setting up the sum of $225.00 to cover the expenses of the escrow agreement I would think that this should not be a major obstacle.

"As soon as this plan is approved by you please return it to me and I will submit it to the Court. As I told you I was trying to aim on submitting it on February 27th. If it is in order sooner I see no reason for waiting, because after the notices go out I think it advisable to see the attorneys for all parties in interest and discuss with them personally the way the whole matter will shape up, and how the allowances can be made to fit, if the United States District Court so indicates.

"Yours very truly,

"Don Reifsnyder".

'N.B." written in pen, "This was dictated before my phone conversation. J.D.R."

Q. Accompanying this letter did you receive the revised plan of reorganization which he referred to therein?

A. I did.

Q. And do you have a copy of that revised plan that he sent you?

(T. 813):

A. I have in my files the revised plan which he sent me, with his cover on it.

Q. Will you produce it, please?

MR. LEVY: I ask that that be identified.

THE COURT: Let it be marked.

(Exhibit D(K)-11 marked for identification.)

Q. I show you Defendant's Exhibit No. D(K)-11 and ask you whether that is the revised plan that was accompanied that accompanied that letter.

A. It is.

Q. Mr. Knight, you have read the revised plan that accompanied that letter, have you?

A. I have.

Q. Whether or not the revised plan that accompanied that letter was in conformity with the terms of the letter?

MR. PRATT: Well, that is calling for a conclusion.

THE COURT: Yes.

MR. LEVY: I intend to ask him to point out in what way it is not, if there are any changes.

THE COURT: Well, ask him if there are any changes, but whether or not they conform surely will have to be a conclusion ultimately drawn by the jurors. You can so frame a question as to bring out the information without drawing on an important conclusion.

Q. Mr. Knight, on Mrs. Reifsnyder's letter, referring to the purchase of the assets, as of what date were the assets to be purchased?

A. January 1, '42.

(T. 814):

Q. What does the revised plan of reorganization say in that respect?

MR. PRATT: I would like to see it. The revised plan speaks for itself.

(The document referred to was handed to Mr. Pratt.)

MR. PRATT: I don't want to be captious but I would like to know what is going on.

MR. LEVY: It is only to aid the Court and the jury, if your Honor please, to show that that was not

contained in the revised plan. Now, I can read the revised plan to the jury that he sent and show what the corrections were that he made.

THE COURT: Can't you ask him in what respects, if any, the revised plan differed from the plan that is set forth in the letter and then he can point out the differences, if any?

MR. LEVY: I will take the Court's suggestion.

THE COURT: It is just as well, without asking for a conclusion as to whether they do or do not conform.

MR. LEVY: Thank you. I will take the Court's suggestion.

Q. In what way, if any, does the revised plan that he sent you not conform with the letter that he had written?

A. The letter which he had written, and which I have read, and the conversation that was had on February 13th were all to the

(T. 815):

effect that the Maxi Company ~~should~~ take over all of the assets as of January 1, '42; when the plan which Mr. Reifsnyder submitted to me arrived it had nothing at all in it about taking over the assets as of January 1, '42. I then redrafted the plan and in some instances used his—

MR. PRATT: I object. Let us have the redraft. I object to his description of it.

MR. LEVY: I intend to produce the redraft, if your Honor please.

THE COURT: Well, this might be a good stage at which to produce it.

(The document referred to was handed to Mr. Levy by the witness.)

THE WITNESS: This was taken from my file.

MR. LEVY: I ask that this be marked for identification.

THE COURT: Let it be so marked.

(Exhibit D(K)-12 marked for identification.)

Q. I show you Defendant's Exhibit marked for identification No. D (K)-12 and ask you whether that is the form that you drafted.

A. This is a carbon copy of my redraft of the plan, the original of which was sent to Mr. Reifsnyder.

Q. Did you, in there, in that plan, make the corrections that you referred to that Mr. Reifsnyder had left off in his plan?

A. I did.

(T. 816):

MR. PRATT: Now, if your Honor please, I object to this character of examination. We haven't seen these documents and his characterizations of them may or may not be correct. It is certainly a question for the documents themselves to speak for themselves.

THE COURT: Let me hear the question, Mr. Barrows.

(The reporter read the question.)

THE COURT: What is objectionable about it, Mr. Pratt?

MR. PRATT: Well, I would like to have an opportunity to see the documents.

THE COURT: Oh, I think you are entitled to see them.

MR. LEVY: Oh, absolutely, and I am sorry. I understood they had all of these documents in their own files.

MR. PRATT: I don't know how we could have them when you have the original, I am sure.

MR. LEVY: The original was sent to Mr. Reifsnyder.

MR. PRATT: I haven't seen it.

THE COURT: Well, of course Mr. Pratt couldn't have it, then, necessarily. And even if he had it there is no indication that you are going to use all these papers.

(T. 817);

MR. LEVY: That's right. I understand. It is just an oversight.

MR. PRATT: I don't care to make any objection that is inconsequential but I would like an opportunity to look at them.

THE COURT: I understand you would like to see the documents. You are entitled to them, Mr. Pratt.

MR. PRATT: Let me have the other document, please.

MR. LEVY: You have both of them there.

MR. PRATT: Have I?

MR. LEVY: Yes.

MR. PRATT: I beg your pardon.

Q. Was your draft accompanied by a letter?

A. It was. That is my letter of February 23rd, as I recollect it, and it was taken from my files by the Government agents.

MR. LEVY: The Government agent has just presented a letter dated February 23rd and I ask that that be marked Defendant's Exhibit D(K)-13 for identification.

(Exhibit D(K)-13 marked for identification.)

MR. LEVY: There is the letter, Mr. Pratt, that accompanied the draft that I gave you.

MR. PRATT: Of this letter that you have mentioned, which is D(K)-13, the Government has a photostatic copy. The other two documents I have never seen. There is no

(T. 818):

objection to this D(K)-13.

MR. LEVY: We offer D(K)-13 in evidence.

THE COURT: Any objection from any of the co-defendants? Have you seen this, Mr. Margiotti?

MR. MARGIOTTI: No.

MR. LEVY: You have a photostatic copy that I have given you.

Offer—Exhibits D(K)-11 and D(K)-12

MR. MARGIOTTI: No, I have the 9th, April 9th. Let me have that.

(Exhibit D(K)-13 for identification handed to Mr. Margiotti.

MR. PRATT: If the Court please, we have no objection whatever to these documents.

THE COURT: All right.

MR. PRATT: I want to say again to the Court that I am not making these objections—

THE COURT: I understand. You have a right to examine them, Mr. Pratt, there is no doubt about it.

MR. PRATT: I don't want anybody to think I am trying to delay the proceedings, that's all.

THE COURT: If you were offering the documents the defense would want to see them, too.

MR. MARGIOTTI: No objection.

THE COURT: All right, let the documents be received.

(T. 819):

(Exhibits D(K)-11, D(K)-12 and D(K)-13 received in evidence.)

MR. LEVY: If your Honor please, I don't know whether I offered D(K)-11 and D(K)-12, but with the Government's statement we now offer them.

THE COURT: All right, let Mr. Kaufman mark them. They have been received, now you may mark them in evidence.

Q. Now, Mr. Knight, does the revised copy that you received from Mr. Reifsnyder in his letter of February 17th, does that contain your original corrections and notations in pencil?

A. On the revised plan which I received from Mr. Reifsnyder, and lies on it Mr. Reifsnyder's cover, contains my pencil notes of changes which I made in very brief, except, possibly, one or two places it is marked "Stenographer's notes," and from that the whole paragraph was redictated.

Q. Now, then, would you read your letter to Mr. Reifsnyder setting forth to him the corrections that you made, that is; the letter that contains your revised draft?

A. Just the letter?

Q. In other words, the letter of February 23rd.

A. I have it "February 23, 1942.

"Don Reifsnyder, Esq.,
"Attorney at Law,
"Scranton National Bank Building,
(T. 820):
"Scranton, Penna.:

"Dear Don:

"Re Central Forging Company.

"I am enclosing herewith a re-draft of the Plan in accordance with your request over the telephone.

"You will note I have slightly changed the form which is, of course, immaterial; have changed the wording of paragraph 2, and inserted a new paragraph 3; have re-drafted paragraph 4, changed the amount of the first mortgage bonds in paragraph 1; in your 5 slightly changed the

language and changed the number to 6; slightly changed the language in your paragraph 6 and changed the number to 7; inserted a new paragraph between your 6 and 7, being new paragraph 8; changed then your 7 to 9, and inserted a new paragraph 11 after your paragraph 8, which with the above inserts, becomes 10; and have omitted your last paragraph and endeavored to embody it in the preliminary statement; and have provided that it should be signed by yourself and Mr. Michael.

"The order I am leaving to be drafted by you along the lines of your letter. However, I take it that the present notice on this preliminary hearing would not be sent out by Mr. Mitchell but would"

MR. PRATT: It should be Michael, shouldn't it?

THE WITNESS: I think that was Mr. Mitchell, the clerk, Mr. Pratt, William Mitchell, who was clerk of the

(T. 821):

court here.

MR. PRATT: Yes.

(Continuing): "—but would be sent out, if not by Crolly, by yours Mr. and that this Order provides merely for a time for the hearing before Judge Johnson and can be on a ten day notice. In fixing date for this hearing for the early part of March I would suggest that you steer clear of March 11th and March 20th.

"Of course, as you well understand, at this hearing the only question for the Judge to decide will be, Is the Plan fair, equitable and feasible. If he so considers it, then he

will draft his opinion accordingly, approving the plan somewhat along the line of his opinion of January 8, 1941 on the Walter Compton plan as printed in the pamphlet and in this opinion you should see that there is embodied the provisions in the latter part of the opinion in the Walter Compton pamphlet; that is, from the last paragraph on page 21, and including the provisions on page 22.

"I note that in that order the Court is using 60 and 30 days. I feel that this much time is not required, and that you can boil this down to a very much shorter time.

"After this, of course, the plan itself with the opinion must be sent out to the creditors, as required by Section 175.

"As you know, with this plan a form of vote must be mailed out, and I have no doubt you have in your possession (T. 822),

the form which was used by Mr. Compton. You will note in that form that it was provided that the vote should be sent to the Clerk of the United States Court in the Federal Building at Lewisburg, and the votes were so sent, but it seemed to be the idea of Mr. Glass then a Deputy Clerk that they should be counted by some person, and notwithstanding my feeling that the count was then in the hands of the Court or his Clerk they were nevertheless referred to Mr. Crolly to go through the motions of a count. You should see that this is not alone in this particular case, as you very wisely suggest in your letter.

"I am enclosing herewith a list of all the interested parties to whom notices were mailed upon submission of the former plan. This was given to me by Homer Davis.

and after it has served its purpose I would appreciate it you will return it to him."

Heading:

"*Shortage:*

"I have permitted the provisions which were drafted by you regarding the amounts to be paid to the secured and the unsecured creditors to stand, with the understanding that we are not to pay more than $17,000 for the assets outside of the inventory. To pay these percentages, it will require $1941 for the 5% on the unsecured and $15,240 for the 20% to the secured, exclusive of the $21,300 worth of bonds held by

(T.823)

the Maxi Company. In other words, the set up will be as follows:

"5% of $38,830	equals	$1,941.50
"20% of $76,200	equals	15,240.00
"Total		$17,181.50
"Amount to be paid		17,000.00
"Shortage		$ 181.50

"I am leaving this stand upon condition that this shortage of $181.50 will be made up to the Maxi Company by deducting it from the amount which it shall pay for the inventory.

"There is another amount for fees which was called to my attention yesterday by Mr. Long. The late Judge Kneisher, before he became judge was one of the attorneys who filed the original petition for reorganization and con-

ducted the hearings before Judge Watson and claims $2[illegible] for this service, and Mr. Long was under the impression h[illegible] had filed this claim with the Special Master. Whether he ha[illegible] or not, some provision should be made for the payment o[illegible] this modest amount.

"It is then understood that we pay for the inventory as set out in your letter of February 17th except that the item of $350. for advances to salesmen is to be eliminated and also the item of excess of $181.50 above, is to be deducted and of course, we are not to pay anything for the supplies, and that will leave the Maxi Company the obligation to make up the balance of my fees, to wit $2,000. This latter, of course,

(T. 824):

is a matter between ourselves.

"Mr. Davis asked me what disposition should be made of the moneys paid out on account of expenses after January 1, 1942, which would be ordinarily chargeable against administrative expenses, and which items were not included in the Balance Sheet of Mr. Dobson when we made our calculations. He stated that his impression was that there were certain payments made after January 1st to Mr. Crolly, which did not appear as payables in the January 1st Financial Statement. I stated to him, and it is my understanding, that all of the payables which appear in the Dobson statement, except the item of $5,213.52 for interest and except those which have since been paid are to be paid out of the funds in the usual course, but that nothing is to be paid out of these funds which applies to administration expenses so that if anything has been paid to Mr. Crolly since January 1st it is to be deducted from the final balance of the amount which Maxi will pay for the current assets.

"Before you file this plan I would like to be satisfied
at the claims proved and allowed amount to no more than
e $38,830.32 which appears in the original printed plan;
al to that end I would very much appreciate if you will
ve some one make me up a list of the claims as allowed
p to the final date fixed for the allowing of claims, and ask
r formally to certify that it is a correct list with the a
ounts of all
f. 825)
aims allowed by him up to that time and that the time
as expired for allowing them.

"Thank you for your reference to the case in 32 Fed.
upp. 827 with relation to the sale of a corporate name.
bstractly it doubtless is truly that the name cannot be sold,
or the reason that the name is something which is allocated
y the Chartering powers of the State. Nevertheless, we
ave a statute in Pennsylvania which provides for the
e-vamping of a corporation under the old charter when
new company acquires the franchise by judicial sale, and
ad that question been raised before the Court and the
Court decided accordingly, I feel that the effect would have
een that the new corporation would have the right to use
he old name. I believe a provision could be put into our
Plan which would cover this, but in view of the fact that
ou already have in the words 'franchise' and that the
eaders will likely never want to use the words 'Central
Forging' I deem it wise to insert no more.

Authority To Maxi To Create Loan

"Work is now in process to have waivers signed for
stockholders' meeting to increase the loan of the Maxi
o fit into the plan, and this will be completed very shortly.

and a short deed of trust made, and your form as I see it used to send out to the creditors. It may be possible that it will not go out on the same day that notices go out but surely

(T. 826)

within a few days thereafter.

"Yours very truly,"

And that letter was signed by myself.

Q. Now, Mr. Knight, you have already told us that the January 1, 1942 date was left out of the Reifsnyder revised plan that he sent you?

A. That is right.

Q. In your plan did you insert that?

A. I did.

Q. Will you read that paragraph in which you inserted it?

A. I read now from my draft, or directions from Exhibit No. D(K)-12, and I read from paragraph 5 of that exhibit, being the draft.

"*Merger With Mari Manufacturing Company.* A corporation organized and doing business under the laws of Pennsylvania, is contemplated herein. All of the assets, claims, patents, rights, franchises, cash, receivables, and property of every kind, nature and description, including trade names, trade marks, advertising media, and good will, title and ownership to which is vested in the Central Forging Company and/or the Trustee and/or the successor Trustee thereof under Chapter X of the National Bankruptcy Act commonly known as the Chandler Act, are by proper instrument or instruments good and sufficient in law to be transferred to and title and ownership thereof

to become vested in the Maxi Manufacturing Company, its successors and assigns as a going concern, as of January 1, 1942, free, clear and divested of all liens, encumbrances,

(T. 827)

and claims of every kind and character, together with all accretions to said property between January 1, 1942 and date of actual transfer — all to be done upon the acceptance of this plan pursuant to law and compliance with the provisions thereof."

Q.—Now, after you had sent that letter, whether or not you heard from either Mr. Reifsnyder or Mr. Michael?

A. I heard from Mr. Reifsnyder by telephone.

Q. And what was that conversation?

A. That conversation was very shortly after he had received this redraft of mine from which I just read. He made the call and he said, "I have received your draft and most of the suggestions, or corrections, are all right but I cannot go along with this insert of January 1, '42, to transfer things of that date."

I said, "Well that was my understanding both as expressed in your letter and in your conversation here on February 13th."

"Well, notwithstanding that, Mr. Knight, we have talked it over here and we cannot go along with having this transfer made as of January 1st because it is just going to get us into a lot of trouble. The things that were there January 1st — inventory — will change, some of them will be used up, new ones may come in, they may be more or less, the accounts will be changed, the old ones will be paid, new ones will come in and they may be more

or loss and it is just going to

(T. 828):

get us to the point of where you can make new demands on us, we can make new demands on you, and we do not consider it practical. We can't go along with it."

The conversation was quite a lengthy conversation. And I said, "Well, then, is this all off, don't do anything?"

"No, we'll make the other minor changes, which amount to nothing, and we'll arrange that you get everything just as was understood when the transfer comes, but the January 1st, getting things as of that date, we can't go with, so what I want you to do is to stand by us and pay the administration costs of this proceeding up to the amount or equal to the amount that we had talked about."

After some conversation on that subject I said, "Very well. Then if you leave this out the plan is to be, then, as you now have it, which is your old paragraph and we will pay the costs of the proceedings as long as they do not exceed $26,404.33," that is the Maxi, "we would pay, if they are less we pay them, if they are more we have the option to take it or leave it."

He said, "All right, we will go along and file it if you will do that." I said, "That is what we will do."

Q. Did he say in that conversation what he was going to do with the plan in the way of printing it?

A. Oh, he said,

(T. 829)

"I will then file the plan as it is and have it printed."

Q. And did he have it printed?

A. He did. I received in due course the printed copy.

Q. Do you have the printed copy here?

A. I have.

(The document referred to was handed to Mr. Levy.)

A. (Continuing): The pencil notations on that have nothing to do with it.

MR. LEVY: May I take Mr. Reifsnyder's printed copy out of his file?

MR. BROOKS: It is loose in there, isn't it?

MR. LEVY: I think it is bound.

MR. PRATT: Here is one you can have, identified by Mr. Knight before the Grand Jury.

Q. I show you a copy of the plan—

MR. LEVY: Mark this, please.

(Exhibit D(K)-14 marked for identification.)

Q. I show you Defendant's Exhibit, marked for identification No. D(K)-14, and ask you whether that was the printed copy of the plan that was submitted to you and sent to you.

A. It is.

Q. And looking at Paragraph No. 5, can you tell us exactly the words that were stricken out of your draft?

A. If you will let me have my copy that I just handed you, I have them inserted there and it will be much easier than to do it from memory.

(T. 830)

MR. PRATT: If your Honor please, that is a matter of conclusion from the documents themselves.

THE COURT: Yes. It is a mere matter of having him read it, I suppose.

MR. PRATT: It is not a matter of testimony, certainly. I object to this, if the Court please.

THE COURT: Well, it might be objectionable in form but of course it amounts to simply this: What is in Mr. Knight's plan that is not embraced within the printed plan submitted by Reifsnyder? I suppose Mr. Pratt is correct, the documents speak for themselves.

MR. LEVY: If your Honor please, to aid the Court and jury I desire to show the exact words that were stricken out of Mr. Knight's plan in Paragraph 5, to corroborate Mr. Knight as to the conversation that was had on the telephone. I can read it to the jury.

THE COURT: I will let him read it. It is a matter of reading, that is all it is.

A. In paragraph 5, in the last line on the second page, after the word "concern" there was stricken out "as of January 1, 1942." My draft read, "become vested in the Maxi Manufacturing Company, its successors and assigns as a going concern as of January 1, 1942, free, clear," and so forth. And there Mr. Reifsnyder has stricken out the words "as of January 1, 1942," and went on with the balance.

(T. 831):

On the next page, also in Paragraph 5, in the next to the last line of Paragraph 5, after the word "character," my plan read: "divested of all liens, encumbrances and claims of every kind and character, together with all ac-

erections to said property between January 1, 1942, and date of actual transfer—all to be done upon the acceptance," and so forth. Mr. Reifsnyder struck out, and printed his form, omitting the following: "together with all accretions to said property between January 1, 1942 and date of actual transfer—all to be done," and so forth.

MR. LEVY: We now offer in evidence, if your Honor please, Defendant's Exhibit marked for identification D(K)-14.

MR. MARGIOTTI: We have no objection.

THE COURT: Let it be received.

(Exhibit D(K)-14 received in evidence.)

THE COURT: The jurors may retire, and the witness may step down.

(The jury retired.)

(A short recess was taken.)

MR. LEVY: If the Court please, we had marked for identification on a previous occasion D(K)-6 and D(K)-5—5 and 6. Both were taken from the files of Mr. Reifsnyder by Mr. Weber, and this morning I offered in evidence D(K)-10 and D(K)-13, which were taken from the files of Mr. Knight. D(K)-5 and D(K)-10 are identically the same; D(K)-6 and

(T. 832)

D(K)-13 are identically the same, that is, D(K)-10 is the original; D(K)-5 a copy, D(K)-6 is the original, D(K)-13 a copy.

THE COURT: That is what I assumed.

MR. MARGIOTTI: If the Court please—

THE COURT: Rather—

MR. MARGIOTTI: Pardon me.

THE COURT: Rather than mark them as one exhibit, let's keep them together so the jury will understand. In other words, with the original and the copy it would more clearly appear that there was an exchange of correspondence of the like, one taken from the files of the sender, the copy, and one taken from the files of the receiver, the original. I think you might just put a clip on the originals so they might be kept together, in other words, the original kept with its copy in each instance.

MR. BROOKS: If your Honor please, there has been a continual reference to these papers being taken from "my files by someone." Is there any inference there that they were not given to someone?

MR. LEVY: Oh, no, no, no, no; there is no such inference.

THE COURT: Oh, no, I think you gentlemen have fairly exchanged your correspondence so that no adverse

(T. 833)

inference may be drawn. In fact I haven't seen any real dispute about what is in one file or another thus far.

MR. MARGIOTTI: If your Honor please, in order that the record may be set straight with reference to Mr. Nernberg, yesterday afternoon Mr. Brooks,

asked me to hold Mr. Nernberg for a while, perhaps for the afternoon. At the close of the session, after a discussion between Mr. Nernberg and Mr. Brooks, Mr. Brooks agreed to excuse him. I just want that noted on the record.

Is that correct, Mr. Brooks?

MR. BROOKS: Correct.

MR. MARGIOTTI: That's all. It is probably the wrong place to put it in but it was on my mind.

THE COURT: I thought Mr. Nernberg was to return with some names.

MR. MARGIOTTI: If your Honor please, he gave what information he had, was able to get, to Mr. Brooks.

MR. BROOKS: He thought of one name, I believe.

MR. MARGIOTTI: Mr. Cooper, an attorney by the name of Cooper who is a member of the Legislature and the individual who consulted him about three or four months ago, I think it was, was a Government representative from Washington, whose name he did not have and was not able to get because he couldn't check with Mr. Cooper or Mr. Stanley Granger, the revenue collector, both of whom,

(T. 834):

were out of the city.

THE COURT: All right.

Go on, Mr. Levy.

BY MR. LEVY:

Q. Mr. Knight, I desire to retrace our steps. You told

us that the original plan was a plan of purchase and that you advised the bankruptcy proceedings. Now, when did you change to a plan of reorganization, and why?

A. That change developed—

MR. PRATT: If the Court please, I do not see the relevancy of this. It is only to confuse the issue. What difference does it make whether it was a matter of purchase or matter of merger so far as the issues in this case are concerned? I object to it.

THE COURT: I don't see that it is material, Mr. Levy, because it has already been decided that even a plan of purchase falls within a plan of reorganization within the meaning of Chapter X, even though it is an out-and-out sale.

MR. LEVY: I don't want to argue the question of law, I just wanted to get a fact that Mr. Reifsnyder and he discussed. In other words, I wanted all the facts of all the discussions, if I can get it in.

THE COURT: All right.

Q. Will you answer the question, please, Mr. Knight? (T. 835):

A. That was developed in the interview or conversation had at my office on February 13th.

Q. With whom?

A. With Mr. Reifsnyder and Mr. Michael present throughout the entire conversation. At that time Mr. Reifsnyder said that for them, meaning the trustee and his attorney, to liquidate the assets and keep the business as a going concern was wholly impractical and from that de

veloped the conversation couldn't it be done as a reorganization rather than to put it into bankruptcy.

MR. PRATT: If the Court please, in the first place, I don't think this is responsive, and in the next place, again it certainly is not relevant to the inquiry here, it seems to me.

THE COURT: It doesn't seem so material but I will let it remain.

A. Shall I go ahead?

Q. Speak up a little louder, Mr. Knight.

A. I am not often accused of being too low.

Mr. Reifsnyder inquired of me whether in my judgment I thought it could be done without a bankruptcy adjudication. I told him that very recently I had come in contact with a lawyer representing the S.E.C. and conversed with him about the proper—

THE COURT: Oh, no, just a moment. I don't mind taking necessary detail but must we really go into all

(T. 836):

of this, Mr. Levy?

MR. LEVY: It isn't necessary, if your Honor please, except I want to show the entire conversation that took place on February 13th. The Government having introduced part of that conversation.

THE COURT: Now you are getting in a contact he had with some lawyer from the S.E.C. The first thing you know we will begin to wonder what we are really trying here.

MR. LEVY: We are not going to go afield at all, if your Honor please. I just want to show that as the result of that conversation Reifsnyder and he agreed on a plan of reorganization for the first time.

THE COURT: Well, why can't he say so without telling us about contacting some lawyer from the S.E.C.? The first thing you know we will have so many collateral issues here that we will lose sight of the principal issue.

A. (Continuing): Well, following the suggestion of the Court, I had concluded from my thought, and some research, that a plan of reorganization could be worked out to effectuate what we were endeavoring to do without an adjudication, and I talked it over with Mr. Reifsnyder and from that the plan was adopted and resulted in the plan that we just had before us and talked about.

(T. 837):

Q. Now, then, after you received the printed plan where was the next time that you saw Mr. Reifsnyder and Mr. Michael, or either of them?

A. My best recollection, refreshed from the correspondence and records, is that the next time they appeared at my office was on April 8th.

Q. Will you tell us what that conversation was? Before we go into that conversation, Mr. Knight, was the plan submitted to the Court?

A. My recollection from the files and records is that the plan was submitted to the Court on February 27th and an order was made on March 16th, the Court approved the plan, which was the first step, and made an order that notices should be sent out with copies of the plan on or

before March 20th. These notices were sent out in pursuance of that order with a blank ballot, that the order of Court provided, which went along with the enclosure to the creditors, that April 1st was the last day in which they could vote for the plan or against it, as they desired. And on April 2nd the votes were counted by Mr. Crolly and the results reported by Mr. Crolly, the Special Master, as I recollect, on April 7th to the Court in the clerk's office. I knew of that result before they were officially reported. Mr. Crolly had informed me of that over the telephone April 3rd or April 2nd, as the case may be.

MR. LEVY: Now, if your Honor please, I would like to introduce in evidence at this time the opinion of (T. 838):

Judge Johnson in the reorganization proceedings, which has been identified by the Government, and part of which files have been offered in evidence, in which the Court states—

MR. PRATT: What is the order, may I inquire?

THE COURT: An opinion.

MR. PRATT: An opinion?

MR. LEVY: It is an opinion in which the Court found the plan fair, equitable, et cetera. If you want to take a look at it it is—

MR. MARGIOTTI: What was the date of it?

MR. PRATT: The record shows it was filed April 7th.

MR. LEVY: If your Honor please, the Government has introduced in evidence the document filed

on March 16, 1942, being an order of Judge Johnson's, a judge of this court, which consisted of a qualified plan and approval of the qualified plan of reorganization. And in conjunction with that I desire to have that marked for identification, that is, the order and opinion of the Court subsequently, on April 7th.

THE COURT: Marked for identification?

MR. LEVY: Presently.

MR. PRATT: Isn't that embodied in the printed notice that went out to creditors?

MR. LEVY: Yes.

(T. 839):

MR. PRATT: Therefore you are duplicating the record by again offering it, are you not?

MR. LEVY: No, I am not duplicating the record unless you have already offered the notice to creditors.

MR. PRATT: It appeared in the printed plan and that you have already offered in evidence, I think.

THE COURT: Let's not argue about, it seems to be one sheet of paper, so let's mark it and we will save time. Let it be received in evidence.

(Exhibit D(K)-15 received in evidence.)

MR. LEVY: I want to read it to the jury, if your Honor please.

THE COURT: All right.

MR. LEVY: "A revised plan of reorganization was filed by Robert Michael, successor trustee of the debtor on February 27, 1942. By order of Court, March

16, 1942, was set as the day for hearing objections, if any, to said plan. A hearing thereon was held in open Court March 16, 1942, at 11 o'clock A.M., at Scranton, Pennsylvania. Proof of the mailing of notices pursuant to order of court was received, which is a part of the records of the case. No objections were filed of record or offered in open court.

"We find that the revised plan of reorganization is fair, equitable and feasible. The various classes of (T. 840):

creditors are properly classified and the members of each class are provided for equally. We hereby approve said plan as filed and find that it may properly be submitted to all creditors and parties in interest pursuant to the provisions of Chapter X of the Bankruptcy Act of 1938.

"Dated at Scranton, this 16th day of March 1942.

"Albert W. Johnson"

In conjunction with that, if your Honor please, we ask that the report of the Special Master voting on a revised plan of reorganization be marked for identification.

THE COURT: Let it be marked and received in evidence in one operation, it will save time.

(Exhibit D(K)-16 received in evidence.)

MR. LEVY: This has been marked filed as of April 7th and I would just like to read that part of the report which tells what the result of the vote of the creditors was.

MR. PRATT: If the Court please, I don't see the relevancy of this.

THE COURT: No, I will let him have it for what it may be worth.

MR. LEVY: After tabulating the creditors the Special Master reports as follows to the Court: (T. 841):

"Thus, 34 bondholders (computing the individual bondholders comprising Bondholders' Protective Committee) voted in favor of the plan, and, two bondholders voted against the plan; and, of the $9,600.00 in bonds outstanding (it does not appear who are the owners of these bonds), I find that 34 of the 36 bondholders, appearing of record, voted a total sum of $82,600.00, of $95,700.00 bonds issued and outstanding, in favor of the plan.

"As respects general creditors claiming as such, without considering the unsecured portion of the aforementioned bonds, as hereinbefore referred to, I find that the following general creditors (having filed their claims) voted in favor of the plan:—"

He itemized the names and amounts of these creditors—"Total 14 Creditors $35,031.57.

"In the same connection I find that the following general creditors (having filed proofs of claim), did not vote:—".

And he itemized the names of the creditors and their amounts, six of them.

"It appears from the dockets of the late David Rosenthal, former Special Master in this cause, that the

foregoing six creditors, not voting, filed their proofs of claim in the amount hereinabove set forth. Conse-
(T. 842):
quently, $35,031.57 in amount of general claims filed (the sum total of all general creditors filing being ($35,566.88), approved the plan. To this amount must be added the amount due unsecured bondholders whose total bond claims is $82,600.00, which unsecured portion of said bonds likewise, votes to accept the revised plan in reorganization; that is, the total amount of 34 bondholders approving the plan which is unsecured, is $52,188.33. The unsecured portion of the total bond issue, considering those voting to accept as well as those voting to reject, amounts to $60,465.17. Therefore, as far as all general creditors are concerned, including the unsecured portion of bond creditors, 14 general creditors and 34 bondholders approving the Revised Plan, hold claims totaling $87,219.90. The total amount of unsecured claims filed is $96,032.05, comprised as follows: General claimants filing, total $35,566.88, plus the allowance of the sum of $60,465.17, representing the unsecured portion of bond claimants.

"I therefore find that more than 66⅔% of all claimants in number and amount have approved the Revised Plan in Reorganization submitted, and I therefore recommend that the Revised Plan in Reorganization submitted be confirmed and approved.

"The ballots of all voting creditors are attached
(T. 843):
hereto and made part of this report, together with

proof of service by Robert Michael, Trustee, and copy of testimony of hearing held on April 2, 1942."

MR. MARGIOTTI: What is the date of that report?

MR. LEVY: April 7, 1942.

Q. And did you get a copy of that report from Mr. Crolly?

A. I have no recollection of getting a copy of the detailed report, my only recollection is that Mr. Crolly phoned me and wrote me a letter and told me briefly what it was.

Q. So that on April 8th you already knew that the creditors had voted and approved the plan of reorganization?

A. I did. It was two days before that.

Q. Did you also know that there was a meeting at Mr. Crolly's office with the attorneys on the fixing of fees?

A. I knew that. I was not present at that meeting.

MR. PRATT: If your Honor please, I object to this, we are getting off the track it seems to me.

THE COURT: He said he knew there was but he wasn't present.

Q. Did you get a copy of Mr. Crolly's report on the application for your fees and allowances?

A. I did.

Q. Can you tell us about when you received that copy in relation to the meeting of April 8th?

A. I received this copy at least—

MR. PRATT: If the Court please—

(T. 844):

MR. LEVY: One minute, Mr. Knight.

THE WITNESS: I beg your pardon, Mr. Pratt.

MR. PRATT: Again I would like to direct the Court's attention to the fact that the issue in this case is exceedingly narrow and testimony of this sort is not relevant to that issue and its only result would be to confuse the jury as to the real issues in the case.

MR. LEVY: There is no confusion whatsoever.

THE COURT: What is the materiality or relevancy?

MR. LEVY: If your Honor please, it was these things that brought on the meeting of April 8th, and the purpose of the meeting and the result of the meeting is in strict conformance with what I am about to show here. Now, the meeting of April 8th is a very important meeting and Mr. Michael testified at length concerning that meeting. That is the meeting in which the alleged conspiracy was practically born, and I want to show there was no conspiracy born that day.

THE COURT: Well, is there anything in Mr. Crolly's report concerning the $3,000 allowance, or whatever you call it, to Mr. Fenner?

MR. LEVY: No, but there is in Mr. Crolly's report the statement that the lawyers had agreed to cut their fees, and that was what brought on the $23,000 figure that Mr. Reifsnyder and Mr. Michael brought to

(T. 845):

Mr. Knight.

THE COURT: Let me see it.

(The document referred to was handed to the Court.)

THE COURT: No, I am not going to permit this document. The objection is sustained. It has nothing to do with the issue before the Court, has no bearing on the situation and its contents, as I have just read them, and the particular parts pointed out to me would be nothing more than hearsay in these proceedings.

MR. LEVY: If your Honor please, I desire to—

THE COURT: I sustain the objection and you may have an exception, Mr. Levy.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U.S.D.J.)

MR. LEVY: If your Honor please, I desire to put on the record, with the Court's permission, our offer.

THE COURT: Let it be marked for identification so there will be no question in the record as to what the exhibit is. It will not be received in evidence.

(Exhibit D(K)-17 marked for identification.)

MR. LEVY: May I put on the record what our offer is, if your Honor please?

THE COURT: Yes, surely. Your offer is this document and if the document is marked for identification

(T. 846):

why doesn't it sufficiently appear of record? I have read the document, I have considered it and I consider

its contents with reference to these proceedings clearly hearsay. It merely voices Mr. Crolly's opinion of Mr. Knight.

MR. LEVY: I don't intend to put in the entire document, if your Honor please. May I put on the record my offer of what I intend to prove by this witness on the stand in reference to this document? That is all I am asking now.

THE COURT: Yes, you may put it on the record.

(At side bar.)

MR. LEVY: We offer to prove by the witness on the stand that before the meeting of April 8th he was advised through a copy of the report sent to him on the application of Harry S. Knight for fees and allowances, which was the report of the Referee in Bankruptcy and Special Master, John Crolly, that, as stated in the report, "In the course of the hearings on the Revised Plan in Reorganization it was apparent among those present that those entitled to participate as administration claimants, such as attorneys, trustees and special masters should accept a lesser sum than what under ordinary circumstances in reorganization cases would be paid administration claimants as compensation, and this

(T. 847):

fact was considered by the proponents of the Revised Plan in Reorganization and was one of the inducing factors."

With this knowledge in mind, when Mr. Michael and Mr. Reifsnyder came to see the witness on the

stand, Mr. Knight, on April 8th, he had already known that there would be a reduction in the amount of the costs of administration, which was agreed upon between the parties at $26,000 to some lesser sum. That is all I have to prove at this particular argument.

THE COURT: Let the record reflect that in the opinion of the Court the document is irrelevant and immaterial to the issues in this case. And further, that its contents are here presented for no purpose other than to place in this record and before this jury hearsay evidence designed to becloud the issue and bring before the Court matters which are otherwise inadmissible.

The objection to the document is sustained and an exception may be noted.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U.S.D.J.)

BY MR. LEVY:

Q. Now, Mr. Knight, you told us that there was a conference on April 8th at your office between Mr. Reifsnyder

(T. 848):

and Mr. Michael.

THE COURT: Just a moment. We want the document marked for identification so that proper reference is made to it in the record.

(Exhibit D(K)-17 previously marked for identification.)

A. There was a conference at which Mr. Reifsnyder and Mr. Michael were present, calling at my office.

Q. And will you tell us what that conversation was?

A. Well, as near as I can recollect it, Mr. Reifsnyder stated that he then knew approximately what the costs or allowances of administration expenses would be, that they would be equal to the maximum amount which we had promised to pay for expenses if the expenses were not up to that amount; that they would be, as near as he could calculate, about $3,000 less than to be equal to the maximum amount which the Maxi Company promised to pay in the event that they went that high. He stated that he knew that, and he was present at a meeting at Mr. O'rolly's office in which fees generally were talked over and that from that conversation and other information which he had he knew they would be about $3,000 less than the maximum which the Maxi Company had promised to pay in the event they would run up to that maximum, and that it would be necessary for both he and Mr. Michael to take less money for their fees than they had expected they would receive.

(T. 849):

Q. Was any amount at any time mentioned as to what they expected to receive?

A. Yes, at that meeting and at a meeting before there were rough calculations made. I am reasonably sure that Mr. Reifsnyder made some calculations across the desk in my office and that he was calculating that he should receive $7,500 and that Mr. Michael also should receive $7,500 for their services. That is an estimate that was being made by him.

After stating that they would not be getting as near this amount as he thought, the other people wouldn't get the amounts that they had anticipated, most of them, it

would be sort of equalling the maximum amount which the Maxi people had promised to pay for costs in the event they would reach that maximum, would be about $3,000 less and that he and Mr. Michael had done a good job in getting this thing closed promptly, it was then recited that the plan had been voted favorably by practically all the creditors and the report had been made and that now there was nothing left but the official confirmation by the Judge, which in the light of the votes taken would be purely a matter of form and that everything was going through all right, that they had done a great deal of work to perfect this in a—or, rather, consummate it in a very short time. Reference was made to the length of time that this plant had been in the hands of a trustee and receivers and that nothing had been accomplished and how they,
(T. 850):
by going around and seeing the people, had put something through which was about to be accomplished in a matter of two or three months and that they ought to have some more money than they would be allowed by the Court, and stated quite frankly that if the costs as allowed would go up to $26,000 that the Maxi Company would be obliged to pay them up to that amount; if they didn't, we wouldn't be obliged to pay them, but they then would like to have this difference between what the costs would be and the maximum amount, which we had calculated we would pay if the costs run up to that amount, which would be about $3,000. I stated, "Well, of course the Maxi—"

THE COURT: Just a moment. Is this the meeting of April 8th?

THE WITNESS: This is.

THE COURT: All right.

A. (Continuing): I stated, "Of course my clients are not liable to pay that or called upon to pay it, they are only called upon to pay the costs:" Every person, the three people, were wholly in accord with that. They said, "Yes, that is true, but if the costs had gone up then you would have paid it, they haven't gone up, why not give us the extra amount that you won't have to pay for costs?"

The conversation, as I recall it, then turned in this way, that Mr. Reifsnyder—and I should say here in all

(T. 851):

fairness that most, if not practically all the talking was done by Mr. Reifsnyder, Mr. Michael may have said a word here and there but they were both sitting close, across the desk from me, and everything that was said by any person was in the hearing of the three, all of whom were present at all times—Mr. Reifsnyder then stated that he had made application for a commission in the Navy and that he might be called any time and that he would like to get this closed very promptly, it was one of his purposes in moving it on as rapidly as possible and he would like to get as much money as possible to leave to his wife and children when he went. I think it was he who made the statement, "Bob," meaning Mr. Michael, "is also of war age and he might be called and we are desirous of getting as much out of this as we can and the Maxi is getting this plant promptly," or "will get it promptly. They need it, they are in war work up there and they need this forging end to supplement the Maxi end, the forging end being in the Central Forging, and they ought to pay this money they are saving, or will not be called upon to pay in the costs."

There was considerable conversation along that line, the details of which I wouldn't pretend to remember, I don't remember all of it, that is three and half years ago, but I remember that there was a very good argument put up as to why the Maxi should pay the money if the costs didn't go up.

(T. 852):

more than they said.

MR. PRATT: If the Court please, I object to this.

THE COURT: No, no, I think it is very material, very material. I think we ought to have it.

MR. PRATT: Very well.

THE COURT: I was just wondering about it myself as I sit here. I think we ought to have all of it. Go on.

Q: Proceed, Mr. Knight.

A. Mr. Reifsnyder put up a very effective argument along the very lines which I have just indicated, that he would like to leave as much money as possible for his children and wife and that Mr. Michael would like to have his share, that they were not, well, I better say, that they were not pleased with the amount that it looked that they were going to receive for their fees considering the job they had done. And it became so effective that I was rather convinced that our people were not up to the maximum which they would have paid had the costs been that much and assuming that what they were telling me about the costs that were to be allowed was correct, because at that time the costs had not formally been allowed by the Judge. I called

my clients; Mr. Davis, as I recollect it, answered the phone—

MR. PRATT: Please, we are getting beyond the April 8th episode there at his office.

(T. 853):

THE WITNESS: No, this is all on April 8th.

THE COURT: No, we are within the scope of the indictment, Mr. Pratt. All right.

MR. PRATT: This is not in response to any question, certainly.

MR. LEVY: It is the conversation that took place on April 8th.

MR. PRATT: Yes, but he has got beyond that.

MR. LEVY: And in the presence of Michael and Reifsnyder. He is not beyond it at all.

THE COURT: I am very much interested in Mr. Knight's version as to how this $3,000 came about. I think his testimony is most interesting and I think we ought to have all of it.

A. This telephone conversation, from my end of the line, at least, was in the hearing of Mr. Michael and Mr. Reifsnyder. I explained to Mr. Davis that these two gentlemen were at my office, that they had stated to me that the costs, or allowances to be made would not be equal to the maximum amount which we had promised to pay by about $3,000 and that the only amount that we would be required to pay would be the costs. But nevertheless, these people felt that they would like to have this extra amount, as they

designated it, and I repeated to him some of the things that were said, and said to Mr. Davis that while they didn't have to pay any more than
(T. 854):

the costs in my judgment, if they wanted to, and felt these people did a good job, they could hand over to them the difference between their maximum amount, which they would pay the costs up to that amount and whatever the costs might be, which would be about $3,000, but that wouldn't be in pursuance of any promise or obligation which they had to pay, it was more or less a gift to them.

THE COURT: A gift of $3,000?

THE WITNESS: I made the remark that it was more or less a gift to them. I think that is the language I used.

A. (Continuing): Mr. Davis made some statement as to what the plant was doing, the fact that they were in war work, the need for the plant below, in which he repeated all of which you know, that they were then engaged in a very secret work as far as the Government had warned them and that the boss, as he referred to Mr. Fred Long, was not in but he thought it would be all right and unless he heard from the boss to the contrary, and I heard, it would be all right to go ahead with it, saying that was the maximum amount and, "Of course, as you say, we would have to pay it if the costs had been that much."

That is about the end of that telephone conversation. It was quite a long one as my records indicate.

I then turned to these people and said to them about what

(T. 855):

was said from the other end of the line and that I would endeavor to get this money for them providing, of course, that the costs did not go beyond what they stated they would go.

Then it was that Mr. Reifsnyder, and I am not sure but I am reasonably sure it was Mr. Reifsnyder, stated, "We would like to have that check made, that check for the extra amount made to an outside party."

I said, "Why do you want to do that?"

"Well, we would just like to have it that way."

"Well, to whom?"

They mentioned two, or three, I am not sure which, lawyers, one of whom was Donald Johnson, to make the check payable to him. I don't remember the other two because I didn't know them and never heard of them. I remember Donald Johnson because I knew him, which made it easy to remember.

Q. Mr. Knight, may I interrupt for a moment? At that time was anything said about giving a check to Donald Johnson for $3,000 for Donald Johnson?

A. Oh, absolutely nothing of the kind. On the other hand, they said, "Give the check to an outside party and the money will come back to us." And there was nothing said about any money going to Donald Johnson or any division with Donald Johnson or either of these other two people who were wholly strangers to me.

My reply to that was that I didn't want a check made by my clients to Donald Johnson because he had nothing to do with

(T. 856):

this case, my clients didn't know him, he knew nothing about the case and didn't know there was such a case, why should that be done. I didn't approve of it.

Mr. Reifsnyder then made the remark, "Isn't Mr. George Fenner or his son the counsel for the Maxi Company and isn't Mr. George Fenner a director of the Maxi Company?"

"Yes, that is true."

"Would you be agreeable to have the check made to one of these people?"

I said, "It would be all right to me to have a check made to Mr. George Fenner if he wants to do that."

That, as I recollect it, was about the end of that branch of the conversation. Then it was that Mr. Reifsnyder went into the question of reducing the receivables and suggested that he could have the receivables reduced and take some amount, $3,000 out of that. My reply to him was, "I don't understand why you want to do that and I don't see any necessity for doing it, that has nothing to do with what we are doing here, or talking about today and I don't understand why you would want to do it. If you are doing it because you are hoping to get this $3,000 that you are talking about, my opinion or judgment as a lawyer is that there is no necessity of making any reduction in anything." I then called his attention to the fact that, "Don't you remember, Don, that you wouldn't agree to have this sale go back to January 1st,

(T. 857):

'42, you had taken it out of the paragraph that I drew for

the very reason that you said there would be some change in the receivables in the inventory and in everything else and it would cause confusion? Now, we fixed upon a maximum amount which my clients would pay for costs and a change in the receivables would have nothing to do with it." I said to him then, it being quite fresh because it had passed over my desk just within the last 24 hours, "You could easily make any reduction in the receivables because we have to collect some of them, just one yesterday, through a lawyer, and that's costing money so we won't come out quite so well in any event."

He seemed, or he did take that cue and talk about a reduction in the receivables ended. We were getting near the end of the afternoon. My memory being refreshed from my records I know that I was then preparing and trying to clear my desk to get away the next day and be away for about seven days, and I said, "I don't see the necessity of this but write me a letter and explain it to me, I'll do what I can to get this so-called extra money for you, and I feel that will be all right."

THE COURT: We will take our noon adjournment. The jurors may retire and the witness may step down.

(The jury retired.)

Noon Recess

(T. 858):

Afternoon Session

HARRY S. KNIGHT resumed the stand.

Direct Examination (Continued)

BY MR. LEVY:

Q. And Mr. Knight, I think you were telling us of the conference on April 8th at your office.

A. That is right.

Q. When the court adjourned. Will you continue that.

THE COURT: Was there anything more said? You want the reporter to read your last answer?

MR. LEVY: He doesn't have it here.

A. After what I reported this morning, as I recollect my report to the court and jury this morning, there was a conversation on the part of Mr. Reifsnyder that he would like to have the receivables reduced so that it would appear in the bill of sale.

Q. May I interrupt you Mr. Knight. I think you got down to the point where you suggested to Mr. Reifsnyder that he write you a letter because you were preparing to leave town.

A. I did.

Q. Now, will you continue from that point.

A. The conversation turned again on the reduction of receivables in order to put the amounts in the bill of sale. I said to him that it wasn't necessary to put any

amount in the bill of sale, I called his attention to what was in the plan, that we were getting everything and that back to January 1, 1942, had been taken out of the plan, that all we needed in the bill of sale was a transfer of everything as set out
(T. 859):
in the plan.

There was before us at that time, taken from the files, Mr. Dobson's report of December 31, 1941. And I also called his attention to the fact that if he was referring to that that there was an account receivable from the Central Forging standpoint from the Maxi Company, that the Maxi Company owed the Central Forging Company, as listed in that report of Mr. Dobson's, among the items of the receivables Maxis owed them $3086.27, as I remember the amount, refreshing myself recently on it, and that that wouldn't be included in any event of the $3,000.

Q. Did you tell him any reason why it wouldn't be included?

A. I stated to him that as I understood that was paid and we wouldn't want to pay for it twice. That is about the substance of what took place at that interview as I recollect it.

Q. Do you know where Mr. Michael and Mr. Reifsnyder went when they left your office?

A. They stated to me that they were going down to Harrisburg to see Mr. Wickersham who was the lawyer who represented the bondholder's committee.

Q. Was that on April 8th?

A. No, I have confused that with February 13th, that is incorrect.

Q. Now, on April 8th, when this conversation was over, did they leave?

A. They left my office in the latter part of the afternoon. In the evening my recollection is that (T. 860):

Mr. Reifsnyder called me on the telephone.

Q. Mr. Knight, as to your recollection on that, did you read the letter of April 9th which has been offered in evidence here?

A. I did.

Q. Does that refresh your recollection as to whether he called you on the telephone or whether he came to your home?

A. It only refreshes it to this extent: that I still have a firm recollection, my best recollection, that he did not call at my home, although these letters would indicate that he did and I wouldn't under oath say that he did not call at my home. I would say that he either called at my home or called me on the telephone, one or the other is positive.

Q. And what was the conversation that you had with him at that time? That is, the evening of April 8th.

A. Well, the conversation, as I recollect it, was much of a reiteration, briefly, of the conversation of the afternoon. He first said that he and Mr. Michael had had dinner at the hotel and they were thinking this over and he again talked to me about a reduction of the receivables and I again reiterated to him that I saw no necessity for it and that I would prefer if he would write me a letter and explain his position on it. Some other parts of the conversation, if I recollect, were repeated. He said that generally speaking it would be satisfactory to have the check made as we had

(T. 861):

talked about it in the afternoon, to Mr. Fenner. That was about the close of the conversation as I recollect it, all I can recollect at this minute at least.

Q. Now, the next day did you write the letter of April 9th, which is here in evidence as Government's exhibit number G-2-B?

A. That's a letter of mine of April 9th to Homer Davis?

Q. It is.

A. I wrote that letter.

Q. And did you receive a letter from Mr. Reifsnyder after that date?

A. I did.

Q. And is that the letter that was offered here by the Government as G-2-C?

A. I can't answer that by numbers, Mr. Levy. If you will let me see it I will identify it promptly.

Q. I show you Government's exhibit G-2-C.

A. Yes, that's the letter that I received in the usual course through the mails, signed Don Reifsnyder.

Q. Can you tell us when you received that—when you first saw it personally, remembering what you had written in your letter of April 9th to Mr. Davis?

A. Well, this letter certainly wouldn't come to my attention before the day after it is dated. It is dated April 9th and it wouldn't get to my attention until April 10th, but I was not in my office on April 10th and did not get back, according to the letter that I wrote to Mr. Davis, and I have refreshed myself from my records, that I did not get back to my office

(T. 862):

until the 16th of April.

Q. So that that was the first time you saw Government's exhibit G-2-C?

A. You are right.

Q. Did you answer that letter?

A. I never did. It didn't concern me or the case from my standpoint.

Q. You knew after the receipt of that letter or when that letter came to your attention that the court had finally confirmed the plan of reorganization.

A. I knew that. I recall the latter part of the day that that came to my attention, or the following day.

Q. And when was the next time, then, that you had any conference at which Mr. Michael or Mr. Reifsnyder or both of them attended?

A. April.

Q. And at which time you talked to them?

A. April 24th.

Q. April 24th. Now, Mr. Knight, I'd like to ask you whether you ever saw Mr. Michael or Mr. Reifsnyder or either one of them outside of the dates of January 23rd, 1942, February 13, 1942, April 8th, 1942 and April 24, 1942.

A. I think you mentioned February 3rd, that is February 13th.

Q. 13th I said, or at least I thought so.

A. My best recollection is that I never saw these men other than those four dates.

Q. And, Mr. Knight, you heard Mr. Michael testify that he came to see you with Mr. Reifsnyder every Friday, or practically every Friday, is that a fact?

A. That is not
(T. 863):
correct. That would be between the time that he was appointed, about January 1st, and April 24th, something over twenty visits.

MR. PRATT: I object, if the court please. That is not in accordance with the testimony.

MR. LEVY: Whose testimony?

MR. PRATT: Michael's!

MR. LEVY: That is exactly what we say, it is not in accordance with his testimony. That is what we are here for.

MR. PRATT: No, the supposition, the assumption that the witness undertakes to make.

THE COURT: Let me hear the answer as far as it has gone.

(The reporter read the answer).

MR. PRATT: Michael said he never saw Mr. Knight until January 23rd, so obviously he is making a computation that is not based on the evidence.

THE COURT: Let me hear Mr. Levy's question.

(The reporter read the question).

MR. LEVY: Let me ask the question again, please. I withdraw the question that I have asked the witness and let me put the question this way:

Q. Mr. Knight, on January 23, 1942, the date that Mr. Michael testified was the first date that he had seen you with

(T. 864):

Mr. Reifsnyder, whether or not he saw you practically every Friday thereafter until April 24, 1942.

A. He did not.

Q. And whether or not he saw you on any other dates than those dates that you have already testified to here.

A. To the best of my recollection he did not, and I have tried to refresh that in every way.

MR. PRATT: As to the best he remembers?

THE COURT: To the best of his recollection he does not.

Q. Now, Mr. Knight, coming to April 24, 1942. Will you tell us what happened at your office on that day?

A. There came to my office Mr. Reifsnyder, Mr. Michael, Mr. Penner, Mr. Homer Davis and Mr. Max Long in the neighborhood, I should think, of the middle forenoon, or 10 o'clock. This was for the purpose of closing, paying the expenses and allowances.

Q. Was the $17,000 already turned over to anyone?

A. Oh, the $17,000 about which you have spoken had been turned over to Mr. Unangst at least a month before April 24th.

Q. Was that under an escrow agreement?

A. Yes.

Q. And I believe that escrow agreement is in evidence, is it not, or am I mistaken about that?

MR. PRATT: I don't know.

MR. LEVY: I ask that this paper be marked for

(T. 865):

identification.

(Exhibit No. D-K-18 marked for identification.)

(Exhibit D-K-18 was handed to Mr. Pratt.)

Q. I show you defendant's exhibit D-K-18 taken from the files of the Clerk of the United States Court in the reorganization proceedings, number 9822b and marked "Filed April 17, 1942," and ask you what that paper is?

A. This is a declaration of trust by the escrow agent, who was Mr. Edward Unangst, and is a copy of the original, certified that it is a copy.

Q. Under that declaration of trust, the $17,000 was deposited with Mr. Unangst for the Maxi Manufacturing Company?

A. Yes.

Q. And that was prior—will you tell us what date that was, please, that deposit?

A. March 2, 1942.

Q. So that the $17,000 that were to go to the bondholders and unsecured creditors were already, on April 24th in the hands of the escrow agent?

A. That is true.

Q. So that at this conference you didn't need to have to discuss that $17,000.

A. That's right.

Q. All right. Now, Mr. Knight, will you tell us what occurred at that conference.

A. At that conference, as far as I know or heard, we gathered around a large, at one end of a large table, about the size of the counsel tables

(T. 866):

that are in this room, and some of the people were moving from one room to the other. This room was acces-

sible by an open door onto a room directly north of it and accessible by an open door to a larger room, my private office, directly south of that, and directly west of that was still another room, accessible by an open door which was the general office where the girls were. There was milling around more or less by most of the parties in these three rooms. Mr. Davis was sitting at one side of the table and drew the checks in accordance with a list of the allowances that had been made by the Judge. That list was there, which I went over, and as they would come to each check I would nod to Mr. Davis that that was all right, he would make that check for the amount to the party as named and the checks were drawn by him and countersigned by Mr. Max Long, who was the President of the Maxi Company, who sat at the end or side of the table, and as the checks were drawn there were two checks payable to Robert Michael, one that included the amount of allowance or fees awarded to him and to his counsel, Mr. Reifsnyder, and the amount awarded to them for expenses, cash expenses. That was in one check and that was drawn and passed over to Mr. Michael. Or I better say it was laid down at the side, one side of Mr. Homer Davis, and Mr. Michael picked it up. There was another check drawn to Mr. Michael's order for a slightly larger amount, I think it was $8,700-and-some-odd—the

(T. 867):

records will show that—which included the allowances made to the Bondholders' Committee, to Mr. Crolly, to me, I think a small amount to Mr. Compton, I am not sure but the records will show, and an amount to Mr. Grover of Harrisburg, a lawyer who had been attorney for Mr. Compton in his administration. There may have been some other

small amounts and those were all included in one check, items given, and that was made to the order of Mr. Michael and he obtained that check.

Another check was made to my own order, Harry S. Knight, for the amount which the Judge had awarded to me, plus the cash expenditures which I had made in connection with the work.

Another check was made to Mr. Unangst, cashier of the Catawissa Bank, who was the escrow agent, for his services in acting as escrow agent, handling the bonds and cashing the bonds. Another was made to myself, Harry S. Knight, which didn't enter into any awards for the Court, for additional fee which the Maxi Company was paying me for services which I had rendered outside of this particular reorganization estate for them.

And another—and that was handed to me—another was made to the order of Mr. Fenner and laid to one side of Mr. Davis. I cannot say whether Mr. Fenner picked that check up or whether somebody else did, at least it didn't stay there, but I know it was made to Mr. Fenner for $3,000. There was

(T. 868):

some discussion there at that time about certain clauses in the deed for the real estate that I wasn't satisfied with the recitation in the deed as to the bankruptcy proceedings and so forth. My recollection is that that whole deed was redrafted, possibly that day, in my office, and that was executed by Mr. Michael and acknowledged by a notary in my office and turned over to Mr. Davis, or at least I pushed it over to his side of the table; he was opposite me. The bill of sale which had been drawn by Mr. Reifsnyder, or in

his office, with his cover on, was presented and I examined that and was satisfied with its contents and Mr. Reifsnyder, or Mr. Michael, executed that in the presence of a witness, who was a clerk in my office, and I think Mr. Reifsnyder, and that was shoved over to Mr. Davis's side. My particular interest there, of course, at all times was to see that my clients, the Maxi Company, were receiving the proper deeds and bills of sale and transfer. I think there were some other minor papers assigning the bank account that was then in the name of the trustee in Catawissa National Bank over to the Maxi Company so that they could get that with the same force and effect as if a check had been drawn.

It is about the substance of what took place as I recollect it. As I say, they were milling around in the other rooms. I was staying pretty much at one place. I think I did walk out into the girls' room at one time to get a paper. (T. 869):

drawn but otherwise I was staying at one place, and I don't know what may have taken place during the moving from room to room.

Q. I now show you six checks which have been marked Government's Exhibits—marked beginning G-3-A, G-3-B, G-3-C, G-3-D, G-3-E and G-5 and I give them to you in their chronological order number, beginning with the check No. A-1663, -1664, -1665, -1666, -1667 and -1668. Are those the checks that were made there that morning?

A. (After examining): To the best of my knowledge those are the checks.

Q. I show you the first three checks in their chronological order, A-1663, A-1664, A-1665, totalling $22,757.83, and ask you what those checks represent.

MR. PRATT: How much?

MR. LEVY: $22,357.83.

A. The check to Robert Michael, Trustee, for $8548.33 represents the following allowances or awards made by the Court, namely, to the Bondholders' Committee—

MR. BROOKS: May I ask what he is reading from?

THE WITNESS: I am reading from a memorandum, the original of which is in the possession of the Government agents, taken from my files, made on April 24th, which is merely a detail of these checks.

Q. I show you Government Exhibit marked G-2-D. Now, will
(T. 870):
you tell us what those three checks represent, please?

A. Reading from G-2-D—this is not the exhibit, they have two more exhibits other than this unless there is more than one in this pocket. I don't think there is—no. This, gentlemen, is an exhibit that is marked "Resume of Central Forging Company Closing, April 24, 1942."

MR. LEVY: Do you have that exhibit here?

THE WITNESS: That is one that was taken, but it is not all here, there were three taken with figures on.

MR. BROOKS: Do you have reference to the typewritten one?

THE WITNESS: Beg pardon?

MR. BROOKS: Do you have reference to the typewritten one?

THE WITNESS: I think it is, Mr. Brooks.

Q. I wonder if you can't get it right from the confirmation order of the Court. Let me put it this way: The first check that was given to you, which is Government's Exhibit G-3-C, which is check No. A41663, made to Robert Michael, Trustee, will you tell us what that includes, what amounts it includes?

A. (After examining): It includes $2,495.80, the amount which is recited in the Court order as being the amount allowed for the costs in the Columbia County equity court, being $2795.80 less $300 bond premium, which is approved in another instance, so making it $2495.80. It also

(T. 871):

includes $4,300 for the Bondholders' Committee, allowances and their attorney's fee, awarded by the Court as follows: To the Bondholders' Protective Committee, made up of three members and its counsel, F. Brewster Wickersham, Esq., requested reimbursement of expenses $500, payment for the time and services of the Committee in the sum of $600 apiece, there being three would be $1,800, plus the $500 would be $2300, and attorney's fees of $2,000 would be $4300. It also includes $350 to John W. Crolly, Special Master.

MR. PRATT: Excuse me. If the Court please, I should like to know what the witness is refreshing his recollection from. He is reading from some document at his side, I don't know what it is.

THE COURT: If he is we are entitled to know what it is, Mr. Levy.

MR. LEVY: Oh, yes, certainly you are entitled. It is a copy of what the Government has taken from his files.

THE COURT: Where is the original?

MR. BROOKS: Let's see it. We have offered what we have here and he says it is not in it, so we want to know what he is reading from.

THE WITNESS: May I answer that?

MR. LEVY: Just one minute.

THE WITNESS: Yes.

(T. 872):

Q. Can you tell us from a reading of the order of the confirmation, without refreshing your recollection from any notes, what these three checks, 1663, 1664 and 1665, represent?

A. I can.

Q. Now, will you tell us what they represent?

A. Let me have the checks to get the amounts. The first one, made to Mr. Michael for the $8,548.33 represents—

MR. PRATT: Payable to whom?

THE COURT: Michael.

THE WITNESS: Payable to Robert Michael, Trustee.

MR. PRATT: As trustee?

THE WITNESS: That is right.

A. (Continuing): That represents the allowance made in the order of Court to the Bondholders' Committee and

their attorney. It also is included in that the amount made to Mr. Crolly as Special Master, the amount made to Mr. Schwartz as Special Master, the amount made to Clare Grover, as attorney for Mr. Compton, and the amount awarded to Mr. Compton. That makes up the total. And I was only checking the total from my memory to see if it totalled the same without making a re-addition.

Q. Now will you take the next check.

A. The next check is to Robert D. Michael as an individual, not as trustee.

Q. Is that the next check?

A. Let me see. I beg your

(T. 873):

pardon. The next check is to Harry S. Knight for $5789.45. It represents $5,500 awarded to Harry S. Knight by the Court and $289.45 as costs for out-of-pocket expenditures awarded by the Court in his order.

The next check is to Robert D. Michael as an individual for $8420.05 and represents the amount awarded to him for costs or for allowances, fees, plus the amount awarded to his counsel, Mr. Reifsnyder, plus their reimbursement for expenses.

Q. So that these three checks, the first three checks, 1663, 1664 and 1665, represent the award of the Court in its order of confirmation?

A. That is correct.

Q. Now, the next three checks in their chronological order, 1666, 1667 and 1668, whether or not they have anything to do with any award in this case, in the reorganization proceedings.

A. They have nothing to do with any award in the reorganization proceedings.

Q. And those three checks in their chronological order were made out to George L. Fenner for $3,000, Harry S. Knight for $2,000 and Edward R. Unangst for $225?

A. That is correct.

Q. Now, you did receive a deed and a bill of sale, or at least it was made up—

THE COURT: Wait a minute, Mr. Levy. Do I understand that answer, that they had nothing to do with this reorganization proceeding?

(T. 874):

MR. MARGIOTTI: He finally said, "Outside of the Court order," which is correct.

THE COURT: I thought he said nothing to do with these proceedings. I thought Mr. Unangst was the escrow agent. Isn't that so?

Q. Mr. Knight, was there any award made by the Court to Mr. Unangst for $225?

A. Let me see the award again.

THE COURT: Well, if I understand the import of the answer it means that these were paid over and beyond the awards made by the Court. Is that it?

MR. LEVY: No, if your Honor please.

THE COURT: I understood the answer to be that they had nothing to do with the proceedings.

MR. LEVY: It had nothing to do with the award by the Court and had nothing to do with these proceedings.

THE COURT: Well, it is the answer, "They had nothing to do with these proceedings," that seems to be a conclusion. I think that is a very serious question

of fact that ultimately the jurors will have to decide, whether or not these payments had anything to do with these proceedings. Now, whether or not they were within the scope of the Court's order is another matter.

MR. LEVY: The witness has testified that it had nothing to do with these proceedings.

THE COURT: Well, maybe he can explain it. I (T. 875): don't understand how it didn't, but he may be able to explain it.

Q. Mr. Knight, will you please tell us whether Mr. Unangst was awarded $225 by a Court order?

A. He was not. I have just examined the order.

Q. So that the Maxi Manufacturing Company paid out on that day $2,000 which the Government admitted was not paid for any services rendered in this reorganization proceeding, they paid that to you, is that correct?

MR. PRATT: I object to that, if the Court please.

THE COURT: Yes, the form of the question is objectionable and the objection is sustained.

Q. Well, they paid out the $2,000 to you as counsel?

A. They paid me $2,000 for services rendered to them, which was over and above services rendered in these proceedings, for which I had been awarded an allowance.

Q. And they paid out $225 to Mr. Unangst for acting as escrow agent?

A. They did.

Q. And they paid out $3,000 to Mr. Fenner, which he was to turn over to Mr. Reifsnyder and Mr. Michael?

A. That was my understanding and that is what they paid.

Q. Now, then, Mr. Knight, did you receive, or did you make up that day, you and Mr. Reifsnyder, the bills of sale and the deeds, or the deed for the property?

A. Will you

(T. 876):

repeat that, or have it repeated? I didn't get the first part, Mr. Levy.

Q. (Repeated by the reporter.)

A. I have received the deed for the property and the bill of sale in behalf of my clients, and turned them over to the Secretary of my clients, properly executed and acknowledged by Mr. Michael so that there would vest title in them in accordance with the order of Court.

Q. Now, have you got the bill of sale that was given?

MR. LEVY: Mark that for identification.

(Exhibits D(K)-19-A and D(K)-19-B marked for identification.)

Q. I show you, first, Mr. Knight, Defendant's Exhibit D(K)-19-A and ask you what that paper is.

A. That is the bill of sale from Robert Michael, successor trustee of Central Forging Company to the Maxi Manufacturing Company.

Q. And is that—

MR. PRATT: I object to this, if the Court please, as not being relevant to the issues in this case.

THE COURT: It might be relevant, I don't know, how material, I don't know how much help it is to us.

Q. And was that the bill of sale by which Robert Michael transferred the personal property and other things to the Maxi Manufacturing Company?

A. It is.

Q. Does that bill of sale contain any amount as to accounts receivable that was received by the Maxi Manufacturing
(T. 877):
Company?

MR. PRATT: Well, let the paper speak for itself.

THE COURT: No, I will let him answer that, and if it doesn't, I want to know why not.

A. It does not.

Q. Now will you answer the Court's question, why doesn't it?

A. First, I didn't draw the paper; second, the Maxi Company was to receive everything it had regardless of what it was, at that time, whether it was inventory, book accounts or anything, we received it and the same language, as I recollect it by looking at it now, is in this bill of sale as is in the plan, itself, and in the order of Court finally confirming the plan awarding to the Maxi Company all of the assets of the Central Forging Company to the Maxi and directing that the trustee should make all the necessary instruments and papers of title to convey them to the Maxi Company.

Q. Did anybody know at that time, or did anybody say at that time the amount of the book accounts—accounts receivable?

MR. PRATT: I object to that, if your Honor please.

MR. LEVY: It goes to the question the Court asked.

THE COURT: Did anybody say? I don't see that the question is even proper.

Q. Did Mr. Michael or Mr. Reifsnyder or anybody else at that meeting mention the amount of the accounts receivable
(T. 878):
then owned by the Central Forging Company?

MR PRATT: I object to that.

THE COURT: No, I will let him answer it. He represented these people and got a substantial fee for it, as I understand his testimony.

A. There wasn't anything said about amounts of book accounts, inventory or anything else.

Q. Do you know whether there was an audit of the amount of book accounts on April 24, 1942?

A. To the best of my knowledge, there was not.

MR. LEVY: I offer in evidence Exhibit D(K)-19-A, if your Honor please. 19-B, if your Honor please, is apparently an assignment from the Maxi Company to the new company, the Catawissa Company, and I am not offering that in evidence because I don't think it is material.

THE COURT: It may be received and marked.

MR. PRATT: No objection.

MR. MARGIOTTI: What is that?

THE COURT: No objection.

MR. LEVY: Do you have any objection?

MR. MARGIOTTI: I don't care whether it goes in or not.

(Exhibit D(K)-19-A received in evidence.)

THE COURT: While Mr. Levy reads that next document, we can take our recess, I guess.

(T. 879):

MR. LEVY: Thank you.

THE COURT: All right, the jurors may retire and the witness may step down.

(The jury retired.)

(A short recess was taken.)

BY MR. LEVY:

Q. Mr. Knight, after the checks were delivered to all of the parties did they leave your office?

A. All of the parties left my office.

Q. About what time was that?

A. It was quite a while after the noon hour, my best recollection would be it was probably in the neighborhood of 1 o'clock or after.

Q. And did they return to your office, so far as you know?

A. My best recollection is they did not return to my office.

Q. And did you accompany them to the bank?

A. Oh, I did not, that was in Catawissa, 25 miles away.

Q. And was that the last conference you had with Mr. Reifsnyder and Mr. Michael?

A. That was the last.

Q. Now, Mr. Knight, I just want to ask you two other questions. I show you Government's Exhibit G-1-F, which is the report of the successor trustee, and I ask you whether you had seen that report when it was filed.

A. It was filed April 14th, it is so marked; I did not see it at that time. My best recollection, from my files, I did not see it

(T. 880):

until the latter part of July of that year.

Q. Of 1942?

A. That is right.

Q. That was after the deal was entirely closed?

A. Oh, yes, three months.

Q. I show you Government's Exhibit G-1-I, which is the first and final account of Robert Michael, successor trustee, and I ask you if you saw that at the time it was filed.

A. That is marked "Filed July 9, 1943." I never saw that until within the past two or three weeks. It was either after this case actually started in this court or very late in the preparation.

Q. Did you have anything to do with advising on either one of those reports?

A. I had absolutely nothing to do, I wasn't the counsel for Mr. Michael, he was associated with Mr. Reifsnyder and I had nothing at all to do with it.

MR. LEVY: May I have the indictment, please?

Q. Mr. Knight, I hate to ask these questions but I feel it is necessary. Mr. Knight, did you knowingly aid, abet,

counsel, induce and procure Robert Michael to appropriate to his own use moneys and funds belonging to the estate of the Central Forging Company in the manner set forth in the first count in this indictment?

A. I certainly did not.

Q. Did you, Mr. Knight, knowingly aid, abet, counsel, induce and procure Robert Michael, knowingly and fraudulently to transfer accounts receivable belonging to the estate of

(T. 881):

the said Central Forging Company in the manner and by the means set forth in the second count of this indictment?

A. I certainly didn't.

Q. Did you, Mr. Knight, conspire, unlawfully, wilfully and knowingly conspire, combine, confederate and agree with Homer Davis, George Feuner, Sr., Donald M. Johnson, and Robert Michael?

A. My answer—

Q. (Continuing): And Mr. Reifsnyder to commit any offense against the United States or to violate Title 11, Section 52-A, which is the embezzlement and the unlawful transfer in the manner and by the means set forth in the counts in this indictment, first and second counts of this indictment?

A. My answer is the same, certainly not.

(T. 883):

HARRY S. KNIGHT, resumed the stand.

(T. 884):

Cross Examination

BY MR. PRATT:

Q. Mr. Knight, in connection with the purchase by the Maxi Manufacturing Company of the assets of the Central Forging Company you determined the value, did you not, by means—the value of the assets by means of the Dobson report?

MR. LEVY: At what time, please?

Q. The Dobson report as of December 31, 1941.

MR. LEVY: I refer to the beginning of his question in reference to the purchase of the assets and I asked what time does he refer to it when he asked the witness when he determined that purchase.

THE COURT: Let the witness tell us.

Read the question, Mr. Barrows.

Q. (Read by the reporter.)

A. Finally, when this was taken over by the Plan there was no purchase, it was a merger.

THE COURT: That makes the question "call it what you will." The question is simple enough: In determining, on behalf of your client, the reasonable value of these assets, whether purchased or part of a merger, was the Dobson report the basis?

THE WITNESS: When we—

Q. Can't you answer that "Yes" or "No," Mr. Knight?

THE COURT: No, let him answer it now.

(T. 885):

THE WITNESS: No, I can't. When we were talking about taking over the assets as of January 1, 1942, and paying an amount for them, so far as the loose assets were concerned, we were predicating the amount which the Maxi Company felt it could pay on the then values set out in the Dobson report as of December 31, '41. When we concluded, after the Plan was not drafted and not put through on that basis, as I wanted it eventually, then we merely adhered to the balance in that report as the maximum which we would pay for costs and it had nothing to do with values in that report.

Q. The computation that you made in connection with your—

A. What was that word?

Q. In connection with your conferences with Mr. Reifsnyder and Mr. Michael were all based, were they not, upon the Dobson report, which we have mentioned?

A. Will you designate which conference your have in mind?

Q. All of the conferences up to and including the 8th day of April, 1942.

A. That is not true of the 8th day of April. The conference we had on February 13th, we were then talking about taking over the assets as of January 1, '42, and we were then talking about the figures that were in the Dobson report.

Q. All discussions related to the Dobson report, did they not?

A. They did not.

(T. 886):

MR. PRATT: Let me have the Dobson report.

Q. This exhibit, G-10, do you have a copy of it?

A. Yes.

Q. And that is the document which controlled your negotiations at the outset, did it not?

A. At the outset it did as to the loose or movable assets. It had no control as to the proposition to buy for $17,000 the so-called fixed assets.

Q. I am referring to the loose assets.

A. Yes, I have answered that.

Q. Entirely?

A. I have answered that.

Q. And in your letter of the 29th of January, 1942, which was the start of the whole negotiation, after the original conference of the 23rd, in that letter you refer, do you not, to the Dobson report, either directly or indirectly? And in this letter on the second page you say this: "The audit was not completed when I was in Catawissa. From the work sheets Mr. Davis furnished the following statement of current assets and current liabilities—"

Now, by the expression "the audit," you refer to the Dobson audit which was then not yet in your hands, is that right?

A. I refer to an audit that was being made for them. I doubt if at that time, January 29th, I knew who was making the audit or had been.

Q. Well, in fact it was the Dobson audit, was it not?

A. I learned afterward that he was the person making the audit,

(T. 887):

or his firm.

Q. Yes. And when Mr. Davis referred to "an audit," you know now, do you not, that what he referred to was the Dobson audit?

A. That is correct.

Q. Yes. Now, ultimately you agreed on a price at which these loose assets were to be taken over by Maxi, did you not?

A. We did on February 13th.

Q. And the amount of that agreement was $26,404.33, was it not?

A. That is correct.

Q. Now, in the letter which you produced in evidence yourself, D(K)-9, your letter to Maxi, dated February 17, 1942, as early as that you had arrived at the figure which became $26,404.33, had you not?

A. Yes, that was immediately after the conversation of February 13th to which I have just referred between Mr. Reifsnyder, Mr. Michael and myself.

Q. Now, in that letter which you wrote to your client on that date, you mentioned a comprise figure in regard to certain manufacturing and office supplies. Do you recall that?

A. I do.

Q. And those amounted to $3,054.21. Do you recall that figure?

A. It is mentioned in the fourth line of the letter.

Q. And that was reduced to $2,000 by negotiation, was it not?

A. The second page of the letter says that that was reduced by $3,054, which would make it reduced to $2,000.

(T. 888):

Q. And ultimately—

A. May I finish?

Q. Yes.

A. On the first page of the letter, in the fourth line, you will see that we were to pay "plus the inventory except, however, the item of $5,054 of supplies, which were to be omitted from the inventory." There was evidently a misstatement there which was corrected in Mr. Reifsnyder's letter to me, which omitted wholly from the calculation the full $5,054.

Q. So that amount was completely eliminated?

A. It was.

Q. So that the balance on the second page of your letter "for inventory," which means the loose assets, does it not, $28,754.33, that would then be reduced to $26,754.33?

A. That is correct.

Q. Now, in addition to that there was an item of $350 which represented advances to salesmen, which was also eliminated from the consideration, was it not?

A. That is correct.

Q. On the ground that it was completely uncollectible?

A. That is correct.

Q. So that reduced the figure to $26,404.33, is that right?

A. That is true.

Q. So that amount was agreed upon at the time of

that letter, or immediately thereafter, on February 17th, is that right?

A. Yes.

Q. Now, the plan was filed on the 27th of February? (T. 889):

A. That is my recollection.

Q. Is that right? And at the time the plan was filed the agreement was that you were to pay, whether you call it merger or otherwise, your company was to pay $26,404.33 for those loose assets?

A. That was not what we had agreed to do at the time the plan was filed.

Q. Now, when was this amount changed? You say that was not the agreement at the time you filed your plan. When was this amount changed?

A. It was changed in a telephone conversation after I had sent a redraft of the plan to Mr. Reifsnyder and inserted in it taking over of the assets as of January 1, '42, which went out of my office on the 23rd of February, and immediately thereafter, possibly the 24th or 25th, Mr. Reifsnyder called me on the telephone and we had a long talk and he said he could not put that in that way and he would not.

Q. You have already testified to that.

A. Yes, I am repeating it because you have asked me, Mr. Pratt.

Q. I am asking you when this amount, this figure of $26,404.33 was changed to some other figure.

A. It was changed in that conversation.

Q. And changed to what?

A. It was changed that we would pay only the costs

providing they did not run beyond or above $26,404.33.

Q. And so you changed the arrangement, the maximum of

(T. 890):

$26,404.33, is that what I am to understand?

A. We changed it to a maximum in the payment of the costs.

Q. And you say that was on or immediately after the 23rd day of February, 1942?

A. It was the 24th or the 25th of February, on his call to me, meaning Mr. Reifsnyder.

Q. Now, the amount that was actually paid by your company on the 24th day of April, 1942, excluding the $2,000 paid to yourself as a fee, which you say was not in this transaction at all, excluding that and giving credit to the Maxi Manufacturing Company for $421.50 which they had advanced in the payment of bond premiums, the amount that you actually paid out by checks on that day was $26,404.33, wasn't it?

A. The amount that we paid for the allowance and costs was $23,404.33 and the check to Mr. Fenner of $3,000, if you add them, will make $26,404.33.

Q. Now, in drafting this check of $3,000 to Mr. Fenner you still adhered to the price of $26,404.33, did you not?

A. No, we had nothing to do with that at that time, we had paid the costs and that was our only obligation. The $3,000 was Maxi money, so considered and so advised by me.

Q. That isn't the way you expressed it in the hearing in the contempt case is it? Do you recall your testimony on that occasion?

A. I do.

Q. I direct your attention to this brief portion of your testimony—

A. Will you let me have the page, Mr. Pratt? (T. 891):

Q. It is at the bottom of page 31.

A. Yes.

Q. Just preceding that, on page 31, and this relates to this meeting on April 8th, you say, "I think most of the actual talking was done by Mr. Reifsnyder, there was some done by Mr. Michael, but after all there isn't must chance for a layman to talk when there are a couple of lawyers present, but Mr. Michael was there and sat on the opposite side of the desk and did engage in part of the conversation, which part I can't say. It was then suggested, possibly by Mr. Reifsnyder, that the amount of the loose assets, inventory and so forth, would be in excess of the amount that would be required to pay the preferred claims, the fees, allowances, administration expenses, and so forth, and whether there couldn't be a separate check made for $3,000 and deducted from the amount of the loose stuff which was in the neighborhood of twenty-three or twenty-four thousand dollars. The papers will show that. If it is necessary I can give it to you. My answer to that was it made no difference to me as representing the purchaser how the money was paid, whether it was paid in one or more checks: we had agreed to pay a certain amount and we were willing to pay that certain amount and my only interest was to receive a proper deed, bill of sale, assignment of accounts, and so forth vesting absolute title in my clients. As to anything else I wasn't particularly interested.

(T. 892):

"A statement was then made they could deduct that

$3,000 from the amount of the inventory as shown, in addition to some smaller amounts that had been deducted by agreement, such as amounts that had been previously paid for administration expenses in the three months, and I think some amounts that had probably been set aside, a few hundred dollars, to pay some Columbia County Common Pleas expenses, that they would deduct this $3,000 from that and then give a check for $3,000 separate.

"THE COURT: Mr. Knight, let me interrupt just a moment."

Now, you recall all this testimony, do you not, Mr. Knight?

A. I have just been following it.
Q. Yes.

"THE COURT: (Continuing) To see if I fully understand this plan or scheme. The top price which your client was to offer was not altered by the plan in any way?"

That's the question to you. And your answer: "That's right." And the Court says: "Wasn't altered by the plan."

And you say: "That's right."

And then the Court said, "The only thing that was altered was the manner of its payment, is that right?"

And you said, "Well, when you speak of plan do you speak of the plan that was filed in reorganization?

(T. 893):

"THE COURT: No, this scheme, we will call it."

And then you said, "Oh. Well, all right, let's designate it as a scheme.

"THE COURT: These negotiations that preceded the plan of reorganization we will term a scheme, and your offer remained the same, as I understand."

And you say, "Absolutely, absolutely.

"THE COURT: But you were to pay the amount of the offer, less $3,000, into the debtor's estate, we will say, is that correct?

"THE WITNESS: Give it to Mr. Michael as trustee, yes."

And the Court then said, "The assets were to then suffer by some manner in which you were not interested a proportionate reduction in value, appraised value?"

And you say, "That's right."

Now, that is not in conformity with what you say now, is it?

A. That is in conformity with what I say now with the modification that I am about to state to you. In the first place, when the Court states at page 32, "The top price which your client was to offer was not altered by the plan in any way?" the top price which we were to pay.

Q. $26,404.33?

A. (Continuing): Was $26,000, was the top price, which finally we were to pay for the costs. It must be kept in mind here that there was an assumption on page 33 about the appraised value of assets, that there

(T. 893A):

never was an appraised value of assets, never any appraisement made of assets at all.

Q. Wasn't there an appraisal in the Dobson report of those assets?

A. There was an appraisal set out in the Dobson report but whether or not it represented an appraisement that had been made when Mr. Michael took it over was not a fact.

Q. That was the basis upon which you were negotiating, as you have already stated.

A. Only in the first instance, up until Mr. Reifsnyder refused to continue negotiations on that basis.

Q. So overnight you changed from $26,404.33 to some indefinite amount that wasn't stated, is that to be understood?

A. That is not a correct statement, Mr. Pratt.

Q. Well, what was it changed to, let's hear?

A. We changed from a promise to buy the assets as of January 1, '42 for $26,404.33 to a promise to take over everything as mentioned in the plan and pay the costs providing they did not run beyond or above $26,404.33.

Q. Now, your conception of this transaction has changed since you testified in this contempt case, has it not?

A. It has not changed at all.

Q. Now, the amount which you actually paid on the 24th of April, 1942, was exactly $26,404.33, including the $3,000,

(T. 894):

the check made to Fenner, that's right, isn't it?

A. If we take what we paid for the costs and add to that Mr. Fenner's check of $3,000 it will aggregate $26,404.33.

Q. $26,404.33?

A. That is correct.

Q. So that at all times you did, in fact, adhere to the figures in this Dobson report, did you not?

A. No. One time we adhered to them as a fixed purchase price; when it was changed, we adhered to them as a maximum for which we would pay—at which we would pay the costs.

THE COURT: You paid the maximum ultimately, didn't you?

THE WITNESS: If you put the two checks together, the Maxi Company paid out on that day $26,404.33.

Q. Yes.

THE COURT: When this change was made was it followed by anything other than a phone call?

THE WITNESS: Well, it was followed by Mr. Reifsnyder having the plan printed without "January 1, 1942," or without giving us the assets as of January 1, '42.

THE COURT: Did you amend your original offer by any written document in which the change appeared?

THE WITNESS: Nothing in writing.

THE COURT: Suppose we adjourn until tomorrow morning at 10 o'clock.

(T. 894A):

The jurors may retire. The witness may step down.

(The jury retired.)

Adjournment taken until Wednesday, October 31, 1945, at 10 a. m.)

(T. 895):

Scranton, Pa., Wednesday, October 31, 1945, 10:00 a. m.

Appearances: (Same as previously noted.)

THE COURT: All right.

HARRY S. KNIGHT, resumed tthe stand.

Cross Examina ion (Continued)

BY MR. PRATT:

THE COURT: Anytime you are ready, Mr. Pratt.

Q. Mr. Knight, at the time of this hearing before Judge Smith in the contempt proceeding, that was about 13 or 14 months ago, I take it that your recollection of events would have been better then than now because more time has elapsed now, is that true?

A. No, that is not true for this reason: I was called in to testify in the contempt proceedings, I assume that the approximate time you give is correct, I recollect some time in the latter part of August—

Q. It was September, I think, of 1944.

A. Well, I will take that as being correct.

Q. A little more than a year ago.

A. Yes. At that time I didn't know for what purpose I was called in and I made no reference to my files or an examination of any question at all, I was merely called here to testify in a proceeding. I had no sooner gotten into

the court room than I was called as the first witness. The files that pertained to the matters
(T. 896):
about which I was then questioned had been taken by the Government agents and were in their hands.

Q. They had been taken with your complete consent, had they not?

A. Oh, yes, oh, yes.

Q. There was no question about their having them rightfully, was there?

A. I wasn't questioning that at all.

Q. And you don't question it now, do you?

A. I do not.

Q. So it is perfectly voluntary on your part, your giving up your files?

A. Well, I'll explain that when I get through with this explanation, if you want me to, how that came about.

Q. You have answered that to my satisfaction.

A. You have asked me one question which I am now trying to answer. At that time I say the matter was old with me, it was a matter then that was possibly two and a half years old and many things had intervened in the meantime. I was not trying, up to that time, to concentrate on that question or to recollect. When this case came about in which I was one of the parties I naturally dug into every file I had on the subject and went over all of those files and read them carefully for a refreshing of my recollection as to dates and so forth because I knew then what the whole question was about and what the charges were. And as I would gather one fact, which I would find, possibly, in a paper, other facts would immediately occur to me. That has been my experience over a period of years, that

(T. 897):

when you begin to think of a matter intensely and keep on thinking about it you get one fact and that will jog your memory about other facts that occurred and as you get other ones, other facts will occur to you so that in the preparation and in the examination of papers and the putting together of facts, as I found them, my recollection was very much refreshed and would be better now as to what happened after that intense recollection and examination of the facts connected with it than it would be just to be called in coldly two and a half years after it happened with no chance to have my memory jogged in any way. That is my answer to your question.

Q. Now, Mr. Knight—

A. I would like to then—you have asked me how these papers were taken with my consent. I would like to answer that further, if you desire that answer.

Q. Well, I don't.

A. (Continuing): I was, in the first place, subpoenaed to bring the papers, all of my papers, here, and I learned the name of the Attorney General, or assistant who had charge of this matter, I called him on the telephone and said that it would be physically impossible to bring a couple of large drawers full of papers, if he would tell me what he wanted I would be very glad to come to Scranton with them. He then asked me if I would consent to have the Government agents come to my office and examine my files. My answer was, "Certainly not. I can give them a room here to

(T. 898):

themselves and they can have access to the files. I have

nothing to conceal about this thing. You can have everything you want and go over all the files."

Two gentlemen came there and remained there for, well, a day or two I should say, during office hours, and all files were made accessible to them, they were given a room by themselves where they could go over the whole matter and they desired to take certain papers with them and my consent was given to take them with them and they did and they have them.

Q. And I think you initialed the various papers which they took, did you not, either then or later?

A. I think that was later, and yet I am none too sure about that. But my initials are on the papers they took."

Q. Now, referring again to your testimony before Judge Smith in the contempt case, particularly with reference to this $3,000. You stated this—

A. What page, Mr. Pratt?

Q. This is on page 31.

A. 21, you say?

Q. 31.

A. Thank you.

Q. This was referring to $3,000, and you said, "My answer to that was it made no difference to me as representing the purchaser how the money was paid, whether it was paid in one or more checks; we had agreed to pay a certain amount and we were willing to pay that certain amount and my only interest was to receive a proper deed, bill of sale, assignment of accounts, and so forth, vesting absolute title in my

(T. 899)

clients. As to anything else I wasn't particularly interested."

And then the Court asked you this—down the page a little,

A. Yes.

Q. The Court said, Judge Smith, that, "I would like to see if I fully understand this plan or scheme. The top price which your client was to offer was not altered by the plan in any way?"

And your reply to Judge Smith was, no, it wasn't altered.

Then Judge Smith continued, "The only thing that was altered was the manner of its payment, is that right?"

And your reply was—

A. Where is that, Mr. Pratt? I don't follow you on that last one.

Q. That is on page 32.

And your reply, after some little discussion as to the use of the word "scheme," was that your offer remained the same. And you replied to Judge Smith, "Absolutely, absolutely."

Then Judge Smith continued, "But you were to pay the amount of the offer, less $3,000, into the debtor's estate, we will say, is that correct?"

And you said, "Give it to Mr. Michael as trustee, yes."

And the Court, again—Judge Smith—continuing that, "The assets were to then suffer by some manner in which you were not interested a proportionate reduction in value,
(T. 900):
appraised value?"

And your reply to Judge Smith, "That's right."

And Judge Smith continued, "But the payment was to be made in two checks?"

And again you answered, "That's right."

And Judge Smith continued, "One, as you said, to be paid to Mr. Michael as the trustee and a second check in the amount of $3,000, is that right"?

A. Where is that?

MR. LEVY: That is on page 34, he skipped page 33 and we are down to 34.

THE WITNESS: That's right.

Q. And then the question was asked you, "Who was that $3,000 to be paid to?"

And you said, "I will give you the balance of the conversation as I recall it."

Now, the questions and answers between you and Judge Smith are at variance with what you now state in regard to this transaction, are they not?

MR. LEVY: One minute. I object to the question as being repetitious. He asked the very thing yesterday.

THE COURT: I will let him ask it again today.

A. Are you asking me whether they are at variance in my judgment?

Q. Yes.

A. They are not at variance for the very

(T. 901):

reason that all of these questions that followed were in the light of Judge Smith's interpretation, which I was satisfied then he understood when he said: "The top price which

your client was to offer was not altered by the plan in any way?"

Q. Just a minute. Now you are getting away from my question, Mr. Knight, and I want—

A. I answered your question, I believe, Mr. Pratt.

Q. I want to direct your attention to what I have read in regard to the colloquy between you and Judge Smith. In that statement you say to him that the amount of the purchase price that you were paying, that your company was paying to the trustee was not altered but that you were dividing it up into two checks, one for $3,000 and one for the rest, for the balance. Isn't that what you told Judge Smith?

A. I am trying to find where I said—

Q. Can't you answer that categorically?

A. I will answer it if it is on here, Mr. Pratt, and I am trying to find whether I told Judge Smith that because I told him exactly what is in this record.

Q. Well, now, let me go back, then.

A. (Continuing): No more, no less.

Q. Let me go back again. And he said, "But you were to pay the amount of the offer, less $3,000, into the debtor's estate, we will say, is that correct?"

And he said, also, it didn't alter the plan in any way. (T. 902):

it didn't change the amount which you were to pay for these loose assets, or that, in effect.

And you said no, it did not.

Is that right?

A. I said, and I say now, that the amount we paid in the two checks didn't any more than aggregate the top price which we calculated we would be called upon to pay

for the costs. And that is exactly what was in mind and exactly what was said here except I didn't use the word "costs."

Q. You did say, did you not, that the full amount of the consideration paid by your client to the trustee, or for these loose assets, was the sum total of the $3,000, plus the rest of the payments which you have detailed?

A. Will you refer me to the place that I say what you have just stated?

Q. On page 31 you say, "My answer to that was it made no difference to me as representing the purchaser how the money was paid, whether it was paid in one or more checks; we had agreed to pay a certain amount and we were willing to pay that certain amount and my only interest was to receive a proper deed,—" and that's all.

A. I testified to that.

Q. Yes. Now, why didn't you tell Judge Smith at that time that you were making a present, a gratuity of this $3,000 to Michael and Reifsnyder?

A. That question was not asked me, it was not asked me how that was paid, the whole question before the Court at that time and the whole process of

(T. 903):

questioning and interrogation was: "Did Mr. Smith get $3,000?" which I learned then he had denied getting before the Grand Jury.

MR. LEVY: You mean Mr. Michael.

Q. You are referring now to Mr. Michael?

A. I beg your pardon. I apologize to the Judge.

THE COURT: I know you didn't mean that I got it.

Q. I am simply directing your attention, Mr. Knight, to the fact that your statements which I have read constitute an unequivocal statement that the purchase price was paid in two checks, or was to be paid in two checks, one for $3,000 and one for the balance and that it didn't make any difference to you whether it was one check or how many checks. Now, that fact you now say is not true, but that on the contrary the $3,000 had nothing to do with the transaction, with the actual sale, was no part of the consideration but was a gratuity, a gift to these two men. That's right, isn't it? Is my interpretation of your testimony correct?

A. With—

Q. Can't you answer that?

A. Yes, with this explanation: That the $3,000 was part of the amount which the Maxi Company, through myself, had calculated in the first instance it would require to pay the costs.

Q. Well, was that $3,000 a part of the consideration you paid for the purchase of these assets?

A. We did not purchase the assets, we were paying the costs of the proceeding.

(T. 904):

It was part—

Q. It amounted to the purchase price of these loose assets, did it not?

A. I will answer it this way: It was, if added to the amount we paid for the costs, it would aggregate the amount we originally calculated we would be required to pay for the costs.

Q. Why didn't you tell that to Judge Smith on the occasion of your testimony in the contempt hearing?

A. For the same reason that I have just related to you, I wasn't asked for any explanation of that kind, the whole matter that was before Judge Smith then was "Did Mr. Michael get $3,000 himself."

Q. Wasn't it further than that? Wasn't the question "Did Mr. Michael get $3,000 illegally by having it taken away, by taking it out of the assets of the trust estate?"

MR. LEVY: One minute. I object to that as assuming something not in evidence. That was not before the Court at that time.

THE COURT: Let me hear the question.

(The reporter read the last question.)

THE COURT: Why wasn't that a collateral issue, Mr. Levy, in that proceeding?

MR. LEVY: If your Honor please, the contempt progeeding was purely on a question of whether Mr. Michael was lying before the jury and thus obstructing justice. (T. 905):

THE COURT: That was the primary issue.

MR. LEVY: It was the issue that Mr. Knight was directed to.

THE COURT: That is true.

MR. LEVY: And he was only a witness in that case, if your Honor please.

THE COURT: The collateral.

MR. LEVY: (Continuing): And, therefore, the only thing he could have answered are those answers of questions that were asked of him.

THE COURT: That is true. I agree with you on that, but whether or not Mr. Michael actually got $3,000 was a collateral issue in that proceeding.

MR. LEVY: In the Grand Jury proceeding, undoubtedly.

THE COURT: And before me.

MR. LEVY: It was a direct issue, did he get $3,000.

THE COURT: Exactly.

MR. LEVY: We don't deny that, but that isn't the question; Mr. Knight had said that that was the issue and he has answered to that issue.

THE COURT: Repeat the question, Mr. Barrows.

MR. PRATT: May I suggest that the previous answer

906);

and question also be read?

THE COURT: All right.

(The record was read by the reporter as requested.)

THE COURT: That is a proper question. I overrule the objection. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U.S.D.J.)

A. There was nothing said about getting $3,000 illegally in the proceedings, as I recall it. The question is asked me whether he was to get the amount, less $3,

000 was to be paid to him as trustee, and I said, "Yes." Then the question was asked whether there was not to be some reduction in the appraised value of the assets and I said, "Yes," or "That's right." And then there was some objection.

Q. You are getting away from my question entirely, Mr. Knight.

A. Will you, then, repeat it?

MR. LEVY: I think the witness is entitled to answer the question. He is not getting away from it.

THE COURT: Let him complete his answer.

Q. Go ahead.

A. Are you finished?

THE COURT: Let him have the answer so he can pick up the trend of thought.

THE WITNESS: I would sooner have, first, the question because there has been so much detraction here.

(T. 907):

THE COURT: All right, let's hear the question.

(Question and answer read by the reporter.)

A. I will follow that further by saying that I did state that the amount, it so reads here, of the offer, less $3,000 was to be paid to Mr. Michael as trustee. And the Court then stated, "The assets were then to suffer by some manner in which you were not interested a proportionate reduction in value, appraised value?"

And I answered, "That's right."

That is exactly in accord with my testimony of yesterday in which I stated that there was talk on April 8th, and this whole conversation in the record before Judge Smith, to which you now refer, is the conversation of April the 8th, that there was talk about a reduction in the appraised value and that I was not interested in that, and so stated.

Q. Now, Mr. Knight, let's get back on the beam. My question was whether you—and is—whether you didn't know that in the contempt case before Judge Smith the issue was whether Michael, the trustee, had not secured illegally $3,000 from among the assets of the trust estate, namely, the assets of the bankrupt. You knew that, did you not?

A. If I knew that it was not placed before me, it was a question whether he got $3,000 in connection with the settlement of this, or adjustment of this estate.

Q. And on that occasion, inasmuch as you were aware to

(T. 908):

that effect, why didn't you tell the Judge that the $3,000 which you gave in a separate check was, as a matter of fact, an outright present which your client had made to these men because they had done a splendid job in which your client had profited? Why didn't you tell Judge Smith that?

A. I answered the questions that were propounded to me.

Q. And nothing more?

A. And I volunteered nothing beyond that, as I would not certainly have my testimony objected to with lawyers on both sides, the same as here.

Q. You stopped in reading the testimony a moment ago in your transcript, that you have before you, by repeating what Judge Smith had said, "The assets were to then suffer by some manner in which you were not interested a proportionate reduction in value, appraised value?"

And your answer was, "That's right."

Then, further, what you did not read was this by Judge Smith, "But the payment was to be made in two checks?"

Now, Mr. Knight, doesn't that imply a payment for the assets of this concern in two checks, namely, one for $3,000 and one for the balance?

A. In my judgment it does not imply. You are asking for my opinion on that and it does not imply. It implies two checks were given—it states two checks were given; it implies nothing beyond that.

Q. In all events at the time of your testimony before Judge Smith in the contempt hearing you made no statement in

(T. 909):

regard to this gratuity or present which you now say was extended to these two men in the sum of $3,000, did you?

A. I made no statements except what is in the testimony, and there is no statement in there that I talked to them about a present.

Q. Now, was there any idea in your mind at the time of this arrangement on April 8th that there was any impropriety in paying $3,000 separately to these men?

A. Absolutely none at all. If I had had any idea that there was any impropriety in that there was certainly no motive to me to see that it was done or have it done.

Q. Now, you say that you had no idea of any impropriety in paying this $3,000 to these two men.

A. Right. And I still feel the same.

Q. Now, why was it, then, that the $3,000 was to be paid through an intermediary?

A. For the reason that these people, first having asked for the $3,000, and that matter of giving it to them was practically settled, I was not interested in how they wanted it, I was willing to give it to them any way and I offered to give it to them in cash.

Q. Did it not occur to you that the mere fact that they wanted it to be made to somebody else indicated some sinister or improper object?

A. That did not occur to me, and if it was in their mind it certainly wasn't in mine.

Q. Nevertheless it was arranged, was it not, that in (T. 910):

order to pay the money to this intermediary there should be a false invoice or bill submitted to the Maxi Manufacturing Company for supplies and purely fictitious legal services in order to justify the payment of $3,000 to that intermediary?

A. That was suggested by Mr. Reifsnyder and emphatically objected to by myself, saying that in my legal opinion nothing of that kind was necessary.

Q. Not necessary. Nevertheless you objected to the check being made payable to Donald Johnson, did you not?

A. I did.

Q. For the reason that he could not logically make a bill, render a bill against the Maxi Company because he had never done any business for them, isn't that true?

A. That is not true.

Q. And why did you object to giving the check to Donald Johnson?

A. For the reason I have stated, that Donald Johnson had nothing to do with this case, was not a party to it, as neither were the other two lawyers mentioned, whose names I do not recall, and that it was wholly unnecessary and possibly undesirable to bring in outside people who had nothing to do with it.

Q. Why was it objectionable as long as you said you didn't care how they got the money, by what intermediate methods?

A. I have stated why, because they were people wholly outside, and when Mr. Fenner was mentioned, he was on (T. 911):
the inside, a director and the solicitor of the company.

Q. Well, what was the objection to making the check payable to either Michael or Reifsnyder?

A. I had no objection to that. I told them I would give it to them any way they wanted, they could have it in cash. After they were getting it it was the question for them to say how they wanted it.

Q. And it didn't occur to your mind, any suggestion of impropriety, when it was suggested that the payment be made through an intermediary?

A. It did not. And if it had, as I have stated before, I certainly would not have been a party to it.

Q. Now, you knew, did you not, that this check was to be, and was, in fact, made payable to Mr. Fenner?

A. I did.

Q. You knew that he wasn't going to retain the money, didn't you?

A. I so understood that.

Q. You understood that it was to be turned back by Mr. Fenner to these men, Michael and Reifsnyder?

A. That was my understanding.

Q. And you also knew and understood that Mr. Fenner was to include this $3,000 in his income tax return of receipts in connection with the practice of law by him?

A. I knew nothing about that.

Q. And did you not know that he was to retain of the $3,000 $500, the estimated amount of his income tax on the

(T. 912):

whole $3,000?

A. I knew nothing about that and I never heard anything about him getting that money until the hearing before the Grand Jury, or the hearing in open court here before Judge Smith in the contempt proceedings.

Q. If you had known that he was to return this full amount of $3,000 in his income tax return and to retain $500 of it as the estimated tax, that would have made such an impression upon your mind as to doubt the propriety of the whole transaction, wouldn't it?

A. Well, now, you are asking me to give an opinion on facts that I knew nothing about, Mr. Pratt.

Q. Well, it is a hypothetical question. Can you answer it?

MR. LEVY: If your Honor please, I object to it for the very reason that Mr. Pratt gave, namely, that it is a hypothetical question.

THE COURT: I don't think it is a hypothetical question, regardless of what Mr. Pratt calls it. I think it may well go to the very pertinent issue here, whether

or not Mr. Knight participated with knowledge. Obviously a passive acquiescence in a crime wouldn't make him guilty but taking participation in a crime would make him guilty?

MR. LEVY: If your Honor please—

THE COURT: It may very well go to the issue of knowledge because his testimony thus far, in substance, is that he was indifferent to what was going on, if anything, and he had no knowledge of it and he didn't care how the money was to be paid.

MR. LEVY: He has always stated that he didn't know that Mr. Fenner was to get $500 and was to pay the income tax from it. He now asks a hypothetical question, "If you did know that fact—"

THE COURT: I will let him answer it. After all, Mr. Knight is a member of the Bar with wide experience and I think it seriously goes to the issue as it concerns him, his knowledge, assuming that Mr. Michael's testimony is true, I am not saying that it is, did Mr. Knight know what was being done. Knowledge is the only thing and knowing participation is the only thing that could make him guilty.

MR. LEVY: My only objection, did Mr. Knight know, and Mr. Knight said he did not know.

(T. 913):

A. My answer as to the question of knowledge, which the Court has stated, that beyond a check being drawn to Mr. Fenner for $500, which I knew was drawn to him—

MR. LEVY: You said $500.

THE WITNESS: For $3,000: I beg your pardon.

A. (Continuing): —for $3,000, which I knew was drawn to his order in my office on April 24th, after that I knew

(T. 914):

nothing about any relations, arrangements, between Mr. Fenner and Mr. Michael and Mr. Reifsnyder, or where it was cashed or how much of the money they got or how it was divided, and heard nothing at all about it.

Q. Now will you answer my question?

A. If it will be read I will endeavor to.

MR. PRATT: Repeat the question, Mr. Barrows.

Q. (Read by the Reporter.)

A. My answer to that is that so far as the money was concerned that was paid out that I would have said there was nothing wrong about that, regardless of the manner in which it was paid because it was the Maxi money.

Q. Nevertheless the plan which I have mentioned, that is to say the return by Fenner of this $3,000 in his tax return would have been a false—it would have involved a false return, wouldn't it?

MR. LEVY: If your Honor please, I object to that.

A. You have asked me wouldn't it. My answer to that is if Mr. Fenner received $3,000 and made a return of $3,000 it would not be false.

Q. Even if it was not in his income but the income of someone else, do you mean to have it understood that that would not be a false return?

A. If it was in his return and he was to account for it

as an income it would not be a false return, it would be a true return.

(T. 915):

Q. It would be a true return?

A. If you want my opinion of it, Mr. Pratt.

Q. It would be a true return although he did not retain the money but turned it over to somebody else, is that right?

A. Yes; that is true of all of us, we make large returns of money we receive but don't keep it, we turn it over to some person else for various purposes.

Q. When you receive money which you retain for legal services you make an income tax return of it, do you not?

A. I do.

Q. And if in this instance you had simply been the intermediary through whom someone else was to get the money, if you returned it as your income that would have been false, wouldn't it?

A. I wouldn't so consider it and I would consider that if I didn't return it that I would be subject to penalization by the Revenue Department, and I have so advised clients in other respects.

Q. Did you so advise Mr. Fenner?

A. I did not. I told you I had nothing at all to do with that and knew nothing about it and today I know nothing about it.

Q. So that this money, assuming that it went to someone else, as you have testified it was intended to go, nevertheless should have been returned as income by Mr. Fenner?

A. You are asking my opinion?

Q. Yes.

(T. 916):

MR. LEVY: I object to the assumption and I object to asking for a legal conclusion from the witness.

MR. PRATT: If it is an assumption, he testified it was to go to someone else.

THE COURT: Let me hear the question?

(The reporter read the question.)

A. My answer is that it should have been returned as income by Mr. Fenner, although I wasn't a party to telling him this, or knew anything about it.

Q. That is your opinion as a lawyer and—yes, as a lawyer, is it?

A. Well, I have given you my opinion, Mr. Pratt.

THE COURT: Well, ultimately it becomes argumentative.

MR. MARGIOTTI: This is free of charge.

THE COURT: Like most free advice, it may be bad, you know.

MR. MARGIOTTI: Good or bad.

Q. Referring to your testimony, again, in the contempt hearing before Judge Smith. I direct your attention to testimony appearing on page 35, the question was asked of you, "Who was that $3,000 to be paid to?" and you continued then to discuss this subject, hardly in response to that particular question but, rather, continuing a previous answer. And referring to the letter which you wrote to Mr. Davis you say

(T. 917):

"Because there is nothing in this letter which would indicate it," in effect, to whom the $3,000 was ultimately to go. "In

the first instance it was stated whether we would make a separate check, as I have already testified—whether my clients would make a separate check for $3,000, and I have given you the answer to that."

MR. LEVY: Mr. Pratt—pardon me a moment—will you give me the page number?

MR. PRATT: 35.

Q. "Then it was stated, 'We would like to have that made to some outside party,' and that was immediately followed by suggesting a couple of lawyers' names who had nothing to do with this transaction at all. My answer to that was that I didn't see why we should make checks in that way."

And then the question was asked whether you remembered the names, and you mentioned the name of Donald Johnson and objected to that because he was an absolute stranger. And then Mr. Fenner's name was mentioned as the intermediary and there was no objection on your part. Then you continued along in connection with this same matter and on page 39 you said, in response to a question by Judge Smith, "I know—" this is your statement, "I know that it was stated there by one of these men, and I can't tell you which one, that they would get back the money of the $3,000 check."

And the Court said, Judge Smith, "But how that was to

(T. 918):

be done no one said?"

And your answer was, "I didn't ask and don't know now."

Then Judge Smith replied, "All right, that is what I want to get clear. But it was said, it was said that the money was to come back to these men?"

And your answer, "Absolutely."

Then further, and continuing on page 41, you were then asked about your letter, which you wrote on the 9th day of April to Homer Davis, and you were asked in regard to a conversation with Homer Davis. The question was, "Now, Mr. Knight, do you recall whether or not you related what took place at this conference between yourself and Michael and Reifsnyder with your clients on that particular day?"

And your answer, "I am reasonably sure that some time that day I—if not that day immediately following—I told the substance of the conversation, so far as the $3,000 was concerned, to Mr Davis, and as you will note, I wrote a letter to him on April 9th giving the resume."

Now, you testified yesterday at great length about your telephone talk with Homer Davis. Now, the letter which you wrote to him you say here constituted a resume of the conversation, the substance of the conversation. Now, let's have that letter.

The exhibit which I hand you is your office copy of your letter to Homer Davis of April 9, 1942. This is Exhibit, (T. 919):
Government's Exhibit G-2-B and, of course, you recognize that, Mr. Knight, do you not?

A. I do.

Q. Will you read that to the jury?

A. "April 9, 1942. Mr. Homer Davis—"

MR. LEVY: Just one minute, Mr. Knight. That is a letter that was already read to the jury a couple of times, I believe.

MR. PRATT: No, it was not read to the jury.

THE COURT: Let's not argue about it. Mr. Knight can read it while we are arguing about it.

MR. PRATT: I am asking Mr. Knight to read it. He read the rest of them but not this one.

THE WITNESS: April 9, 1942.

"Mr. Homer Davis,

"Catawissa, Pa.

"Dear Homer:

"This is to remind you to have printed the debentures on the form which I submitted to you, and which as I recollect it you took with you.

"Last evening about 8 o'clock Don Reifsnyder called at my home. He said that he and Mr. Michaels had had dinner in Sunbury, had talked over in detail the problem which we discussed here for an hour or two about getting the extra money, and made a suggestion that it be paid to a lawyer whom he designated who would render

(T. 920):

a bill to the Maxi Company, namely that the Maxi Company now pay to the Trustee $22,982 being $3,000 less than the amount we calculated and then later on pay the $3,000 to a lawyer to be designated by Don who would render a bill and they would arrange them to get this $3,000."

Don meaning Mr. Reifsnyder.

"I was not impressed with carrying out this purpose through a stranger who had no occasion to do business for

your plant, and knew none of you, never had been at the plant and never saw any of the parties. I suggested to Don that we would endeavor to protect him and that personally I would like to see it done through Mr. Fenner or young George Fenner; that in any event he would be perfectly justified in giving us a reduction of 15% on the receivables, especially in light of the fact that we were required to place at least one account, and probably more, in the hands of an attorney, and even if we collect it, it would cost us the 15% collection fees. 15% of the receivables taken over January 1 amounts to about $3500.00. It was then arranged that he would write me a letter stating that they could not agree to the deduction of 15% which would amount to about $3500 but they would agree to a flat deduction of $3000 and make the price $22,982.00 plus some odd cents, and that we (T. 921):

would endeavor to make some arrangements through Mr. Fenner to work out a plan satisfactory.

"I told him I could not talk to Fenner between now and the 17th because I was leaving today and would not be back until the night of the 15th at least.

"If you feel that you can explain this to Mr. Fenner I would be very glad to have you take it up with him, and I will explain it more in detail when I get back, and am able to see him. If you feel it would be better for me to take it up in the first instance, you can let it go until I return.

"Very truly yours."

MR. LEVY: One minute, please. To refresh Mr. Pratt's recollection to his direct statement that he did

not read this letter to the jury. I refer to page 54, Mr. Pratt: This letter of April 9, 1942, identified—"

MR. PRATT: The reference was made to whether it had been read by Mr. Knight, as I understood it.

MR. LEVY: Oh.

MR. PRATT: I certainly read it to the jury.

MR. LEVY: Oh.

THE COURT: I am sure that the jury is not interested in whether you are right about it or Mr. Levy is right about it. I can decide that some other time after this case is over. The issue here is the guilt (T. 922):

or innocence of these defendants and the charges embraced within this indictment and whether a letter is read once or twice or three times isn't going to hurt us very much. I would rather have it overdone than underdone. All right, let's go on, gentlemen.

Q. Nothing was said in that letter to Homer Davis about this being a present, a gratuity, this $3,000 to Michael and Reifsnyder, was there?

A. Nothing said in the letter, that was said to him in the afternoon when I talked to him.

Q. You said that to him in the afternoon. And in the letter you expressed the purpose of covering up a payment of $3,000 by having it made payable, the check, to some lawyer, apparently finally agreed upon as Mr. Fenner, and thus hidden from the records?

MR. LEVY: One minute, please. I object to it. The letter speaks for itself and it is assuming something that is not in evidence.

THE COURT: No, I will let him answer this because he has persisted throughout his testimony that he had no knowledge of it and here is this letter. I think we are entitled to some explanation.

A. My answer to that is my interpretation of the letter is not such that it indicates anything wrong or "covering up." May I explain further?

THE COURT: I wonder what you meant in that letter by "protecting Mr. Reifsnyder"? If nothing was wrong about it in your mind, why was it necessary to "protect," as you put it in your own letter, "Mr. Reifsnyder"? (T. 923):

THE WITNESS: My answer to that is that when we talked in the afternoon it was that this money would be paid to him, or given to him unless we heard to the contrary from the firm, Mr. Long, who was the head of the firm, otherwise it would be all right, as I testified yesterday. And I had in mind when that letter was written that I would make every effort to get the money from the firm for him, and, if necessary, talk it over and lay the facts before the people who were to have the last say. That is what I meant. It also should be kept in mind, if I may explain to your Honor, this letter states that I was about leaving town for seven days. This was written on that day and that I was leaving in the afternoon. I have now checked my records and it was an effort to put in a short letter the substance of a conversation that lasted possibly a couple of hours. It may not have been put in as carefully as

it would have been if it had gone to some person where I was endeavoring to frame a contract, it was going to a client, to some person who knew generally what it was all about.

(T. 924):

Q. Now let me call your attention to this first paragraph, or really the second paragraph. You say, "Last evening about 8 o'clock Don Reifsnyder called at my home. He said that he and Mr. Michaels had had dinner in Sunbury, had talked over in detail the problem which we discussed here for an hour or two about getting the extra money, and made a suggestion that it be paid to a lawyer whom he designated who would render a bill to the Maxi Company,—" Now, that suggestion of rendering a bill to the Maxi Company meant, did it not, a fictitious bill?

A. I would think that that would be true when he spoke of that. I was reciting what he said to me.

Q. Yes. He suggested that a fictitious bill be rendered by the person to whom this check was to be made payable and that met with your approval, did it not?

A. It did not, and it was never done, and I told him that I would not be a party to that, that it was unnecessary, as I have testified now three times, Mr. Pratt.

Q. Now, is it customary to render bills for gifts?

A. Well, so far as I know, my answer to that is no.

Q. Now, I want to ask you again, you say you disapproved of this fictitious bill being rendered. I want to ask you whether the fact that such a suggestion was made by Reifsnyder or Michael did not suggest to your mind that there was some impropriety in the whole business.

A. It did not because

(T. 925):

when I talked to them and explained the position, it was thoroughly cleared up.

Q. You told them you wouldn't do it, that's right, isn't it?

A. I told them I wouldn't do that, that there was no necessity of doing it that way at all.

Q. No necessity for doing that. But it was arranged that in order to clear the record the amount of the bills receivable, the accounts receivable would be shut down on the record by $3,000 so that there would be no inconsistency on the record; is that right?

A. That was not arranged, that was talked of and I testified I told Mr. Reifsnyder that I didn't know why he wanted to do that, why he talked about it, that I was in a hurry to get back to my work and he should write me a letter explaining it. I never consented to that nor was a party to it, never understood it and don't understand it now.

Q. Now, in that connection, on page 88, weren't you asked—just a minute.—in the contempt proceeding, "You did suggest to Mr. Reifsnyder that there should be a percentage cut in the receivables, did you not?"

And your answer, "I suggested that if he wanted the amount set out in the bill of sale as less than was shown in his letters, and possibly in mine, that there should be some cut in that amount so that it would be set out in the proper way and wouldn't show a discrepancy."

(T. 926):

You recollect your answer?

A. I answered just as you read.

Q. Yes. And in conformity with that isn't it a fact,

and didn't you know when the report was made by Michael to the Court as a basis for the allowances and fees that he would reduce the amount of receivables by $3,000 in order to cover up this payment that you were authorizing to be made through an intermediary?

A. I testified yesterday, I repeat it now, that there was nothing there said about filing a report. I never knew that report was filed or what was in it until some time in July, following the settlement in April. And then I noticed the report stated plainly on its face that the accounts were assigned and unassigned, adjusted, and in that respect, if we used the word "adjusted," it would be possibly a correct statement by deducting the amount that Maxi owed the Central, if you are using those figures. I knew nothing about that, I was here talking about an amount to be set out in the bill of sale.

Q. Why did you use the word "discrepancy"?

A. Because that was a word that was used by them, that they wanted to get something in the bill of sale and I suggested that if they wanted the amount set out in the bill of sale at less than was shown in our letters, possibly in mine, that there should be some cut in the amount so that it would be set out in the

(T. 927):

proper way. I was not—

Q. That was—

A. Please let me finish, Mr. Pratt.

Q. Go ahead.

A. I was interested in having them set out in the proper way and I was trying to avoid having something set out there that didn't represent the true reflection, and that is the very thing I had in mind.

Q. Now, these questions and this discussion all related to this matter of the $3,000 which was to go, so far as you knew, to Michael and Reifsnyder, is that right?

A. It related to the $3,000.

Q. And you now say, and which you said yesterday, was entirely a gift, a gratuity which was given to Michael and Reifsnyder because they had done a job quickly and which had benefited the Maxi Manufacturing Company, your client?

A. That is what I said.

Q. And again I ask why, in the hearing before Judge Smith, you did not disclose that gift or gratuity.

A. My answer to that is the same as I have made for you at least three times before: First, I was not asked the question at all as to how that came about, the only matter that was stressed was did Mr. Michael receive $3,000 and was there some conversation in my office on April 8th about $3,000, and I testified to what I did here, learning afterward, or developing as the case went on, that Mr. Michael had testified to another state of facts and absolutely denied receiving any money or talking in

(T. 928):

my office about getting any money or eventually getting anything.

Q. Now, in your present testimony the inference is made, I take it, today that this payment to Michael and Reifsnyder was perfectly legitimate, entirely within the propriety and within the rights of the Maxi Manufacturing Company, namely, a gift?

A. That was my legal judgment then and it is now.

Q. But you withheld that information from the Court when you testified in the contempt proceeding a year ago?

A. I was not asked for my legal opinion in that particular.

Q. Now, if it was legal then and legal now I want to ask you again why it was that it became necessary to pay this $3,000 to channel it through an intermediary.

A. In my judgment it was not necessary, I was merely complying with a request that they wanted it that way. My clients and myself were willing to pay it and we would pay it in the manner they wanted it paid.

Q. And if they had wanted it in cash you have already said you would have been glad to give it in cash?

A. I said so.

Q. And if it was given in cash then there would have been no necessity of this complicated matter of the intermediary, would there?

A. Well, if it would have been given in cash that would have been the end of that.

Q. Yes. Now I want to direct your attention to your (T. 929):

attention to your testimony in the contempt case.

* * * * * * * * *

(T. 933):

Cross Examination (continued)

BY MR. PRATT:

Q. Mr. Knight, I direct your attention to further testimony which you gave in the contempt hearing before Judge Smith a year ago last September, on pages 59, 60 and 61, briefly, and the question was asked you, "Now, Mr. Knight, on the 24th day of April, 1942, in that conference at which Mr. Reifsnyder and Mr. Michael were present

wherein you were discussing the amounts of money to be paid out and the $3,000 check, did you have any direct conversation with Mr. Michael with reference to the $3,000 check?"

And your answer, "You are speaking of what date?

"Q. April 24, 1942—or April 8th, I beg your pardon; (T. 934):

April 8, 1942."

So this relates back to April 8th.

And your answer, "That is the conference which we talked about this morning at which Mr. Reifsnyder and Mr. Michael were present."

Then Judge Smith said, "No, Mr. Knight, Mr. Goldschein's question is more specific, he asked whether or not at that conference, and with reference to this $3,000 item, there was any conversation that you recall with Mr. Michael. In other words, did you say anything to Mr. Michael concerning the $3,000 or did Mr. Michael say anything to you with reference to the $3,000?"

And your answer to the Judge's inquiry, "Yes, I have a recollection of saying something to Mr. Michael. Do you want that recollection?"

Judge Smith replied, "Yes, what was it?"

Then the question was further propounded, "Q. Yes, what did you say to Mr. Michael and what did he say to you?"

And your answer, "This was during the conversation about the $3,000 being separated and being paid in a separate check, to all of which I testified this morning. I re-

member saying to Mr. Michael—probably addressing it to both but in the end probably addressing it particularly to Mr. Michael which will develop in my statement in a moment—I stated that it made no difference to me or to my clients how we paid
(T. 935):
the money as long as we were paying no more than the original amount, that my interest was to get the proper deed, bill of sale and assignments and so forth, and that was my purpose."

And then continuing your statement to Mr. Michael, "'You are under bond and an officer of the court and it is your responsibility what is done with the money, it isn't mine.'"

You recall that, do you not?

A. I testified to that, exactly.

Q. Now, if this transaction was perfectly legitimate why was it that you warned Mr. Michael that as an officer of the court he was under bond and would have to account for everything he received as trustee?

A. For the reason that I had stated to Mr. Michael, as I stated this morning or yesterday, at that time in my legal judgment there was no necessity for anything to be done in changing accounts or anything else about this, it was the Maxi money. But I couldn't foresee everything. There might be contingencies arising, claims made by someone for accounts, and so forth, which I could not foresee. If anything of that kind should happen it was his responsibility and not mine.

Now, isn't this what you were doing and what you had in mind: that here was an item of $3,000, the payment of which was being covered up and you, to use a slang expres-

sion, you were passing the buck to him to protect himself so that his bond would not be liable?

A. I never had anything of that

(T. 936):

kind in mind.

Q. What was the necessity of your calling his attention to his official bond, as trustee, if the transaction was perfectly legitimate?

A. My answer to that is the same as I have given you within the last minute and a half.

Q. Does not this imply a warning to him that the matter should be kept secret and that he shouldn't tell about it?

A. In my mind it does not.

Q. Didn't you know that Mr. Fenner was objecting to being used as the intermediary in this transaction?

A. I never knew anything about Mr. Fenner's objections or his attitude and do not at this time.

Q. That was a matter of which you had no knowledge at all?

A. Absolutely correct, I had no knowledge of Mr. Fenner in this transaction.

Q. Now, I have already called your attention to the report which Michael made to the Court, I think it was filed on April 14, 1942, G-1-F. I believe you said that you never saw this until some months after the matter had been closed?

A. I never saw the original until I was engaged with my lawyers in the preparation of the case. I saw a copy of it some months after the transaction was closed.

Q. Now, you knew, did you not, that it was necessary for the trustee to make such a report as this to the

Court, to Judge Johnson, in order that the Court might know how much

(T. 937):

money was available in making allowances for fees and expenses?

A. I did not know that. I have never heard it being done in any reorganization case and there is nothing in the law requires it and I had no reason to believe that that was being done.

Q. Now, let me read this to you briefly:

"REPORT OF SUCCESSOR TRUSTEE

"Prior to the time for hearing on the confirmation of the revised plan of reorganization, as approved by the vote of the requisite number of creditors, and prior to the application for fees and allowances by the various parties in interest, the successor trustee hereby submits a report of the assets to be acquired in the reorganization as an aid to the Court. The figures submitted below are taken from reports audited by Dobson Accounting Service, Wilkes-Barre, Pa."

The statement then follows:

"Cash advanced by Maxi Manufacturing Company to pay bondholders and general creditors A/c plan $17,000.00

"Cash or debtor 133.90

"Finished products

"Parts in process

"Raw materials

"Unexpired insurance premiums

"Cash surrender value of life insurance,"

and the final item,

(T. 938):

"Accounts receivable, assigned and unassigned, adjusted $20,534.50"

Now, you knew at that time, did you not, that according to the Dobson report the accounts receivables were twenty-three instead of twenty thousand, did you not?

A. At what time?

Q. At the time this was filed on April 14, 1942.

A. I had no knowledge of that being filed on April 14, 1942. Answering your further question, I would say that the Dobson statement of December 31, '41, to which that does not refer, it only refers to a Dobson statement—

Q. But the Dobson report of December 31, 1941, in fact, gave the accounts receivable as $23,534.50 instead of $20,534.50 as stated in this report, isn't that true?

A. It gave the accounts—

Q. Isn't that true?

MR. LEVY: One minute, please, Mr. Knight.

Q. Can't you answer that categorically?

A. It is not true.

MR. LEVY: One minute, please, Mr. Knight. The witness was interrupted in his answer to the previous question. I would like to get the answer to the previous question. I mean Mr. Pratt, the Government attorney, interrupted the witness in his answer to the previous question.

(T. 939):

THE COURT: All right, let me hear it, Mr. Barrows.

(The reporter read the answer.)

MR. LEVY: Now, will you answer that, please? Will you continue with your answer to his question?

A. (Continuing): There were other statements of Dobson's out at that time, later statements that showed a different set-up of the condition of the company than that of December 31, '41.

Q. Well, you have already stated, Mr. Knight, that the negotiations were based upon the Dobson report as of December 31, have you not?

A. That is true, when we were talking about purchasing the plant up to February 24th or 25th, when the whole plan was changed and from that time had nothing, as such, to do with the Dobson statement.

Q. You say the whole plan was changed when Mr. Reifsnyder called you on the telephone and objected to that period of January 1, 1942, is that right?

A. Which resulted in Mr. Reifsnyder drafting a plan and putting it on record, which entirely changed the former arrangement.

Q. Now, the item of accounts receivable, which was mentioned in the Dobson report of December 31, 1941, was exactly $3,000 more than the amount stated in his report of the 14th of April, was it not? If you know. If you don't know, say so.

A. Yes, I think I know that there was approximately $3,000 difference between that and the Dobson

(T. 940):

statement, as shown on its face.

Q. You say approximately.

A. Yes, I couldn't give you—

Q. Was it exactly?

A. I couldn't give you that exact figure. The statement would have to show for itself.

Q. But you don't know, then, that it was exactly $3,000?

A. Not unless I would compare the two.

Q. Well, let's have the Dobson report.

I direct your attention to this page of the Dobson report on the balance sheet, Exhibit A in the report, Accounts receivable, $23,534.50. Do you see the item?

A. I see the total item of $23,534.50.

Q. That's right. Now, what is the amount on the report of April 14th?

A. The report shows "Accounts receivable, assigned and unassigned, adjusted $20,534.50," which would be a difference of $3,000.

Q. Exactly.

A. Yes. If I subtract correctly. I would like, after answering that, and you have referred me to the Dobson account, to explain the answer to the question in the Dobson account.

MR. LEVY: Go ahead and answer it.

THE COURT: I don't know what question is pending that he cares to answer.

MR. PRATT: There is no question pending, as far as I am concerned.

THE COURT: All right, if some explanation is necessary, I will let him make it. (T. 941):

THE WITNESS: I have been asked the question whether the accounts receivable in the Dobson state-

ment of December 31, '41, shows $23,534.50. My answer to that was that that shows the total. The details are as follows: "Assigned as collateral $13,283.67; unassigned, $10,250," and so forth, making the total.

I also desire to state, if you will turn to another place in the Dobson account where the receivables appear, you will find that there is an account owing to the Central from the Maxi of a little over $3,000.

Q. The exact amount being $3,084-and-some cents, is that right?

A. No, that is not correct, your figures are incorrect, sir.

Q. What is that?

A. Pardon me?

Q. What is it?

A. It is $3086.27, as I recollect it. You will pardon me for that correction.

Q. I was $2 out, wasn't I?

A. Yes. I had no business doing that.

Q. Now—

A. So that would be a deduction, if you wanted to consider them together, one taking over the other, that would be a deduction from that 23, would make the twenty-some-odd.

THE COURT: Now, Mr. Knight, just a moment.

THE WITNESS: Yes.

(T. 942):

THE COURT: Is there anywhere in the record in this court or in your files or in any correspondence any statement by you or anyone else interested in these

proceedings that that $3,000 in question was that $3,086 of which you speak?

MR. LEVY: Why, Mr. Michael testified that undoubtedly that was deducted from the $20,000.

THE COURT: Now, Mr. Levy, I didn't ask you the question.

MR. LEVY: You asked—

THE COURT: And Mr. Knight needs no assistance from counsel at this stage. I asked Mr. Knight the question.

MR. LEVY: I beg your pardon.

THE COURT: I expect the answer from him and not from you.

THE WITNESS: You mean whether that was deducted in the Dobson statement?

THE COURT: I am asking you whether or not in the ultimate closing of these transactions there is any written report, either to the Court or in your files, which reflects that the $3,000 deduction of the accounts receivable was, in fact, a credit to your company of $3,086.

THE WITNESS: There is not anything in my files

(T. 943):

that I know anything about and I never looked for anything because I knew nothing of this statement that was being filed in April until long afterwards.

THE COURT: Well, then, why do you at this

stage of the proceedings make the explanation that you have just made?

THE WITNESS: Simply, because they call it to my attention and ask me what it means, when it is marked on there "Adjusted," "Assigned and unassigned, adjusted," and I was endeavoring to give the explanation that occurred to me when I first saw it some month afterwards.

THE COURT: Was that, in fact, the adjustment?

THE WITNESS: I don't know.

THE COURT: Well, then—

THE WITNESS: I don't know what they made. I was giving my interpretation.

THE COURT: All right.

THE WITNESS: Because I did not make it.

THE COURT: All right. Let's go on, Mr. Pratt.

Q. Now, as a matter of fact, assuming that the Maxi Manufacturing Company paid this $3086 in January, or whenever it was, that $3,000 would have been added to the current assets and would be a substitute for the $3,086 of receivables so that the net would remain the same?

A. It would go into the cash.

(T. 944):

Q. It would go into the cash so that the net of the current assets would remain exactly the same, that's right, isn't it?

A. If it stayed there it would.

Q. Or if it was used to pay accounts payable those would be reduced and the net would still remain the same?

A. Yes, if there were no new ones coming in.

Q. So that when the original proposal was made it was anticipated, was it not, that there would be such changes as to alter specific items but that the net would remain stable and practically the same?

A. What do you mean, the original proposal, Mr. Pratt?

Q. The proposal which you made as of January 29, 1942.

A. In that proposal—

Q. Can't you answer that categorically?

A. I am saying if you are referring to that proposal there is nothing in it that refers to the loose assets, movables or accounts receivable, they are especially excepted from the proposal if you will notice on the first page of the letter.

Q. Now I am directing your attention to the second page of that original proposal of yours in which you say, "I am informed, also, that while this statement of January 1, 1942, that there would be no material difference in the current position from month to month over a period of a few months, that is, there might be in the next month less inventory but it would reflect itself in greater receivables and the receiv-

(T. 945):

ables might become less, which would reflect itself in the cash and cash used to pay the payables, so that the net would remain about the same."

A. That is in the letter. That's a recitation.

Q. Yes, in the letter.

A. And I was so informed, but it is not part of my proposition as recited on page 1, and possibly the top of page 2, which says that we will "pay $17,000 for title to the

land, plant, machinery and equipment and all assets of every kind and character except accounts receivable, cash goods in process, goods finished and raw materials, and then we will waive our claim—" that was the exception.

Q. Then you referred to the loose assets which you acquired?

A. Yes.

Q. And for which you agreed to pay $26,404.33, is that right?

A. You mean agreed to pay that up until February 24th when Mr. Reifsnyder refused to put it in the plan that way and filed his plan differently and then we agreed to pay the costs up to as long as they did not exceed $26,000.

Q. And then it was that you made a present of $3,000 to Michael and Reifsnyder?

A. Well, we didn't do it just quite at that time, we did it—

Q. Now, I want to direct your attention, Mr. Knight, to page 95 of your testimony in the contempt hearing before Judge Smith where you were under cross examination by Mr.

(T. 946):

Coar and you were asked this question:

"All right. On April 8th, then, you knew then that moneys were to go from your clients' hands into the hands of a man who was not entitled to them, to wit, one man named Fenner. Did you know that, Mr. Knight?"

And your answer, "I knew it was proposed to do it that way."

Do you recall that?

A. I so testified.

Q. (Continuing): That answer?

A. I so testified.

Q. Now, you said a few minutes ago that you offered these men that item of $3,000 in cash, did you not?

A. I said I offered to pay it to them that way. I didn't actually offer the cash if that is what you mean.

Q. What did they say, what objection did they make to taking it in cash?

A. My recollection is that the only objection is they said, "No, we don't want it that way."

Q. "Don't want it that way." Now, as a matter of fact, if it had been paid that way they might have avoided the deduction of $500 for the payment of income tax to anyone, might they not?

A. Well, if the payment had been made directly to them the income tax would have been a matter for them.

Q. And not for you?

A. I never paid any income tax and I never had anything to do with that.

Q. And you never had any interest as to who paid the tax

(T. 947):

or whether a correct accounting was made to the Government in an income tax return?

A. I was not their lawyer nor their guardian to that extent.

MR. PRATT: That's all, your Honor.

BY MR. MARGIOTTI:

Q. Mr. Knight, you have testified when Mr. Reifsnyder and Mr. Michael first talked about the fees they

wanted in the Central Forging case they said they wanted $7,500 apiece, or a total sum of $15,000. Is that correct?

A. That is correct.

Q. Now, when was that conversation in which they said that they wanted out of this estate for their fees $15,000, or $7,500 apiece?

A. February 13th would be my record of that.

Q. Prior to that time had there been any discussion between you and them, or by them in your presence, concerning the amount of fees that they would like to have had?

A. No. I had but one meeting with them before that.

Q. All right. In that discussion was there anything said

(T. 948):

about your own fees?

A. At the talk of February 13th, yes.

Q. What was that discussion?

A. That discussion was that I intended to apply for $7,500, after having consulted with my clients as to what amount they thought I should have.

Q. In this examination for the present I want to carry through the question of the fixing of the fees for them and yourself. So that in the first conversation you, as attorney for the petitioning creditors, suggested $7,500 for yourself and they had suggested $7,500 for each of themselves. Did they state how they reached the conclusion that in an enterprise in which they had been appointed in January—this was February the 13th, a period of about six or seven weeks—they each thought they should have $7,500 each?

A. Yes. There was a small amount of conversation to that effect and my recollection is, to sum it up, that they

had accomplished, or were about to accomplish a very satisfactory job of getting this reorganized and getting it out of court, if they could carry it through as they had planned in a very short time, and that prior to their administration it had been in the hands of the Court and had been operated by a trustee, taking the two courts together, back from about August, 1938, up to the time they took charge in January, '42.

Q. Mr. Knight, in that conversation, or in any other conversation, did either Mr. Reifsnyder or Mr. Michael tell

(T. 949):

you that—strike that question out, please. Did Mr. Michael tell you in that conversation or any other conversation that he had been appointed trustee in the Edington Distillery case and that Don Jenkins—Daniel Jenkins, rather, was his lawyer, and that he and his lawyer in that other case had not been paid enough and this was a good way to make up for the work that they had done and hadn't been paid for?

A. I have no recollection of anything of that kind being said or any reference made to this other case at all.

Q. All right. Very well. Now, then, in that conversation of February the 13th was there anything decided on the procedure with reference to getting the $7,500 in fees by Mr. Reifsnyder and Mr. Michael? What were they going to do about it, were they going to petition the Court or were they going to see the Court? What were they going to do?

A. My best recollection is there was nothing decided upon at that time, they were just rough calculations that we were making.

Q. Well, then, in that rough calculation it had been calculated that that was the fee, am I right or wrong?

A. That that was what?

Q. Was it calculated then that that was the fee?

A. It was calculated that that's what they wanted.

Q. Well, that's what they put down.

A. That is what I saw him put down.

(T. 950):

Q. Who put down?

A. Mr. Reifsnyder put down on a pad.

Q. All right. Now, may I ask you this question: Was that fee ever reduced? Was the calculation ever reduced, let's put it that way? At another time isn't it a fact that when they discovered that there wasn't enough money to justify a fee of $7,500 apiece that they agreed then to make it $6,000 each?

A. I can't recollect whether it was five or six, but I know in another calculation it was made less than the first.

Q. I see.

A. It may have been five, it may have been six, I can't remember.

Q. At any rate, the second calculation in which there was a reduction was not the final calculation, was it? On fees, now; I am sticking to fees.

A. Well, the calculation which we had second, I don't recollect that we had a third one on fees at all, I am reasonably sure we did not—

Q. I will say this, Mr. Knight: The petition that was filed for fees in court was for $4,000 apiece, that is, for them.

A. I heard that afterwards, I didn't know it when it was filed.

Q. That is correct. Now, then, when was that sum of $4,000 agreed upon?

A. I never agreed with them as to any amount of their fees.

Q. Well, you had agreed, you have testified here that you had agreed that you were going to pay the costs. Of (T. 951): course your company would be interested in the amount of fees because they would be part of the costs.

A. Well, we didn't agree on any $4,000. We were interested in knowing when the costs were allowed how much they were and we had a ceiling beyond which we would not go.

Q. And they had to so adjust their fees, which were part of the costs, to come into that picture, as to fit into the picture, put it that way?

A. Well, I presume they did. I wasn't present when they made their application and, as I say, I couldn't know what it was. I knew what the allowances were finally when they were paid.

Q. I am now taking from Government's Exhibit G-8-A certain yellow sheets.

MR. MARGIOTTI: Mark this, please.

THE COURT: For identification?

MR. MARGIOTTI: Merely for identification.

THE COURT: You better mark each sheet, I think. There are three, Mr. Margiotti?

MR. MARGIOTTI: Yes. Mark this next and then this one.

(Exhibits D(J)-5, D(J)-6 and D(J)-7 marked for identification.)

Q. I show you for identification a yellow sheet marked Defendant's Exhibit D(J)-5, taken from what has been identified as the file of Don Reifsnyder and Mr. Michael, and ask you

(T. 952):

whether or not you have—when I say Mr. Michael, I don't mean from Michael's own files, but he claimed—

THE COURT: A joint file.

Q. (Continuing):—a joint file.

A. Well, this looks like the paper, at least it is the same amount put down opposite the name of Mr. Michael and Mr. Reifsnyder as he put down on a yellow pad, similar to this piece of paper, opposite me, on the opposite side of my desk.

THE COURT: Keep your voice up, Mr. Knight; some jurors are straining trying to hear you.

THE WITNESS: I beg your pardon.

A. I say I would not say that this was the piece of paper that was used by Mr. Reifsnyder in my office. I saw him put down figures opposite the name of Mr. Michael and Mr. Reifsnyder, the same as are on here, to wit, $7,500, and I am of the opinion that he put down the other figures that are here for the allowances. The figures that are above that were calculations that he made and I think were not put down in my office.

Q. At any rate, Mr. Knight, are you acquainted with Mr. Reifsnyder's handwriting?

A. I have never, but that one occasion, possibly one or two occasions, seen him write.

Q. Just answer the question, you are or you aren't?

A. I couldn't testify that I am.

Q. All right. That answers the question. But at any rate this is a calculation giving the assets and liabilities— (T. 953):

MR. BROOKS: Do you offer it in evidence?

MR. MARGIOTTI: Do you have any objection?

MR. BROOKS: You are reading from it.

MR. MARGIOTTI: I am not stating what they are.

Q. Giving the assets and liabilities of the Central Forging Company.

A. (After examining): I don't know, it purports to be that.

Q. It purports to be that. And at that time you met on February 13th, you sat on one side of the table, Mr. Reifsnyder and Mr. Michael on another and there he was writing on a paper like this?

A. That is correct.

Q. And he was setting down—did you discuss at that time the figures that are contained in this paper that I have called to your attention?

A. At least some of them, if not all of them.

Q. All right.

A. (Continuing): On the bottom of the paper with relation to allowances.

Q. I notice that the figure of $7,500 apiece for Bob Michael, trustee and Don Reifsnyder—

MR. PRATT: Now, if the Court please, I haven't seen this document.

MR. MARGIOTTI: Well, it came from your own file, you have produced it.

MR. PRATT: And I don't think Mr. Brooks has. (T. 954):

MR. MARGIOTTI: I assumed that you have seen what is in the papers that you produced.

THE COURT: Well, of course further than that there is no proof at this stage who made it or when it was made or anything about it.

MR. MARGIOTTI: That's right.

THE COURT: It may develop, I don't know.

MR. MARGIOTTI: I think you are right, Judge.

MR. BROOKS: We didn't think he was going any further than the $7,500 matter and let it go.

MR. MARGIOTTI: Are you satisfied with that?

MR. BROOKS: No, I didn't say to let it go in evidence, I was just confining it to that.

MR. MARGIOTTI: May I withdraw that last question?

Q. May I put this question to you: Did you see Mr. Don Reifsnyder write those last two lines, giving the name and the amount for fees for himself and for Mr. Michael?

A. I wouldn't testify that I saw him write it on that paper. I saw Mr. Reifsnyder write down on a similar yellow sheet $7,500 for himself and $7,500 for Robert Michael.

Q. And at the time he wrote that had any other figure been discussed and does this paper, particularly the way 7500—had any other figure been discussed except the $7,500? Now look at the writing and just use that to refresh your memory. If it does refresh your memory, answer it, if not,

(T. 955):

you don't need to answer it.

MR. PRATT: I don't see—

A. I can't see that definitely another figure was discussed.

Q. Well, then, that is February 13th. Now I am going to show you Defendant's Exhibit D(J)-6, another yellow sheet taken from the same file that the Government has produced. I want you to look at that and tell me if you know anything about that yellow sheet.

A. (After examining): I know nothing about that yellow sheet.

Q. I want you to state whether or not there was a time when the fee of Don Reifsnyder and Michael, so far as they were concerned, was fixed as of themselves at $6,000 apiece, cut off $1,500 each?

A. My best recollection is that the next talk we had, April 8th, it was talked about, either five or six, but I couldn't say positively which one.

Q. All right. Now, will you tell me why they reduced their fee from $7,500 to $6,000? What caused the change in the reduction? if you know.

A. I don't know.

THE COURT: Let's adjourn until 2 o'clock.

The jurors may retire and the witness may step down.

(The jury retired.)

Noon Recess

H. S. Knight—Cross

(T. 965):

Q. Mr. Knight, at the noon recess I showed you two yellow sheets marked Defendant D(J)-5 and D(J)-6. I have had marked for identification D(J)-7, D(J)-8, 9, 10, 11 and 12, consisting of two sheets. I am going to hand you these others and I want you to state whether or not you ever saw any of these.

A. (After examining) I could not swear that I had ever seen those sheets before.

Q. Mr. Knight, will you once again, for my purposes,

(T. 966):

fix the date when this discussion took place concerning the fees, the first discussion about the $7500 apiece for Reifsnyder and Michael.

A. My recollection is that that was on February 13th.

Q. 13th. Now, then, the next time you discussed it, the next time you met them, according to your testimony, is April 8th?

A. That is correct.

Q. Now, at that time was there anything said concerning the amount of fees?

A. Yes, sir.

Q. What was said at that time?

A. It was stated at that time that the aggregate of fees and allowances wouldn't be more than approximately $23,000 and would not run up equal to the maximum which the Maxi Company had said they would be willing to pay for costs.

Q. What I have in mind particularly, Mr. Knight, I don't care about a long discussion concerning it, I am only interested in knowing what was said between you and Mr. Michael and Mr. Reifsnyder with reference to their fees.

A. My best recollection is that they were talking to me about a fee to them of $5000.

Q. Well, did you know that there was a petition filed in court for the fixing of fees and they had asked that their fees be fixed at $4000 each?

A. I do not recollect that they told me that at the time. I wouldn't say they did not.

(T. 967):

Q. All right. Did you know at that time that their fee was to be $3950 each?

A. No, I did not.

Q. In other—strike that, please. When did you first find out that Judge Johnson had fixed their fee at $3950?

A. I think I was given a list of the fees by mail shortly after Judge Johnson made the order fixing the fees.

Q. Well, can you give up approximately the date, as near as you can, when you first learned that their fees were to be $3950 each?

A. Well, I would only be judging that from the time they were fixed and I would think that was the latter part of March.

Q. Well—

A. No, wait a minute.

Q. Did you know that before the meeting of April 24th at your office at which there was a distribution of funds and you said that the checks were written out?

A. Will you let me refresh my mind on dates?

Q. Yes, go ahead, Mr. Knight.

A. I desire to correct the statement that I made that I probably knew this the latter part of March. I could not have known it then because fees were not allowed until about the 17th of April.

H. S. Knight—Cross

Q. There has been handed to me here a petition, trustees' request for allowances and accounting of disbursements, which is marked "Filed April 16, 1942." Now, had you ever seen that before it was filed?

A. I had never seen that before this trial started. (T. 968):

Q. Well, that is the petition in which they asked for $4,000 apiece. Did you ever see the Court order which was made on the 20th of April fixing the fees at $3950?

A. I saw that about the time this trial started, or shortly before in preparation for the case.

Q. Now, will you tell me—

A. (Continuing): For the first time.

Q. All right. Will you tell me whether you had any knowledge of the various steps from the time these two men, Reifsnyder and Michael, said that they wanted $7,500 apiece, the various steps down to the time that the petition was finally filed for only $4,000 each, and how that came about?

A. I don't know how that came about at all.

Q. All right. But you know how the reduction came about?

A. I do not.

Q. In your statement that was introduced in evidence, as I recall it, there was a remark that Mr. Reifsnyder and Mr. Michael were dissatisfied with the fees that they were going to get out of this case. Do you remember that statement?

A. I do.

Q. Now, when was it that you were apprised of the fact by them that they were dissatisfied with their fees?

A. That was on April 8th.

Q. April the 8th. Well, now, during any discussion from the time you first met these two men until you last saw

(T. 969):

them on April the 24th, 1942, did they ever tell you that a single cent of their fees was going to go to Donald Johnson or any other person except themselves?

A. They never did.

Q. When they asked for this $3,000 and you agreed to give it to them and recommend that it be paid, either in cash or by check or whatever way they wanted it, did they tell you why they wanted it?

A. They did.

Q. What did they say?

A. As I stated either this morning or yesterday, they stated—it was stated by Reifsnyder that he wanted to get this case closed promptly, that he had or was about to make application for a commission in the Navy, he was likely to go at any time and that he wanted to get as much money for his wife and family, children, as he could and that Robert Michael was also in the war age and might be called, and added to that that they had done an excellent job, to all of which I testified this morning, and in a very short time had gotten this matter ready to be turned over to the Maxi Company, well knowing that the Maxi Company was engaged in war work and needed the plant and they thought that the Maxi Company could well afford to pay them as they spoke of this, this extra money.

Q. Well, I assume at that time we were at war and equipment was hard to get and these were kindred companies and your company wanted to have this other plant, is that right?

A. That is true. And it is especially true, to know the facts, that

(T. 970):

these two plants, the Maxi and the Central Forging Company, were cooperating plants, that is, no one, neither one of them did all the processes on any product that was turned out. One of them was a forging plant, which was the Central, and made forgings, and the finishing and the processing—

Q. Mr. Knight, I think the jury understands that, you explained that before.

A. (Continuing). —was done at the other plant. I was trying to answer your question.

Q. Now, Mr. Knight, this money, then, they told you would go to themselves, to Mr. Michael and to Mr. Reifsnyder, is that correct?

A. That is correct.

Q. Now, you testified that there was no plan finally adopted until after February the 23rd, no revised plan, after that telephone conversation Mr. Reifsnyder had with you following your meeting of February the 13th.

A. That is when the terms of the plan were finally determined.

Q. That's right. Now, then, after February 23rd, is that correct?

A. I would say it was more likely the 24th or the 25th because my letter was dated the 23rd and in due course it would not reach Mr. Reifsnyder at least before the next day.

Q. Very well. Well, then, on February the 13th had you or had you not agreed upon a plan, or had a plan merely been proposed?

A. On February 13th a plan was agreed upon but was not carried out in the final plan, filed by Mr. Reifsnyder.

(T. 971):

Q. Now, did you hear from Mr. Reifsnyder after February 13th by letter other than what you have testified to here?

A. Permit me to look at my files.

Q. I just want to know whether you received any communication. I don't know what is in them. I want to ask you a question concerning his writings, one question will clear up what I have in mind.

A. Will you repeat the question?

Q. Did you after February the 13th receive letters from Mr. Reifsnyder other than what have been introduced here in evidence?

A. Well, I think the one of February 17th to me in which he enclosed his plan, or his revised plan—

Q. I don't want any letter that you have already referred to, any other letter.

A. Yes, I have one here dated February 21st.

Q. Anything else?

A. I am looking. And a letter dated April 9th, which I think is in evidence.

Q. Yes, that's right. I am talking about other letters.

A. Nothing else according to my files.

Q. Nothing else. I want you to tell this jury whether at any time, either by letter or by telephone conversation or by conversation with either Michael or Reifsnyder you ever learned that these two men, on the night of February 13th, had a discussion in an automobile trip from Harrisburg north, coming to Scranton, concerning Donald Johnson.

A. I never knew anything about that until I heard it in court from Mr.

(T. 972):

Michael.

Q. There is some evidence in this case to this effect, in substance: that Mr. Reifsnyder is supposed to have told Mr. Michael that on this automobile trip Mr. Reifsnyder said to Mr. Michael, "Well, I have talked this matter over with Mr. Knight about how to take care of Don Johnson," or words to that effect, "and he is quite agreeable, he is willing to go along." Was there ever any such conversation with you?

A. I have already testified that there was no such conversation, and furthermore that I never had a conversation with Don Reifsnyder when Mr. Michael was not present throughout the entire conversation.

Q. Very well. Now we go to the conference of April the 8th. It was at that conference that Mr. Fenner was agreed upon as the intermediary, as he has been called here, is that correct?

A. That is correct.

Q. And it was at that conference, as I understand your testimony, that Donald Johnson's name was mentioned for the first and last time, is that correct? in connection with the Central Forging case, so far as you are concerned, is that right?

A. First and last and only time.

Q. And only time.

A. I want to correct a former statement.

Q. I beg your pardon?

A. (Continuing): When you said that Mr. Fenner was agreed upon, there was no agreement, I

(T. 973):

said it would be agreeable to me.

Q. I see. All right. Now, Mr. Knight, in mentioning Donald Johnson's name, so there won't be any question here, he was mentioned merely to act as an intermediary, is that right?

A. That is right.

Q. In other words, he was mentioned to do the same thing that Mr. Fenner did?

A. That is correct.

Q. Take the $3,000 check in his name and give it to them?

A. I so understood it.

Q. All right. Now, then, there were two other lawyers mentioned.

A. That is my best recollection.

Q. Was one of those lawyers Daniel Jenkins?

A. I couldn't say that he was.

Q. Did you know Daniel Jenkins?

A. At that time I didn't know Daniel Jenkins and had never heard of such a person.

Q. I see. Well, there were two lawyers mentioned whom you had never heard of before?

A. That is correct.

Q. And they were mentioned along with Donald Johnson's name, is that right?

A. That is correct.

Q. Do you recall whether one of the other two, or both, were mentioned before Johnson or Johnson mentioned first or Johnson mentioned in between or how?

A. I wouldn't undertake to recall that.

Q. All right. Did you, from either Mr. Reifsnyder or

Mr. Michael, at any time have any information from them,

directly or indirectly, which in any way brought the name of Donald Johnson into the Central Forging business with the exception of what you have said concerning April the 8th?

MR. PRATT: I object to that, if your Honor please, it is repetitious.

MR. MARGIOTTI: It may be repetitious but—

THE COURT: I will let him answer it. Did you hear the question, Mr. Knight?

THE WITNESS: I would like to have it read now.

THE COURT: All right, let Mr. Barrows read the question.

THE WITNESS: I am quite sure I know what it is but I am not sure of the form.

Q. (Read by the reporter.)

A. Never at any time.

Q. Did you have any information from any other source that he was connected with this Central Forging matter?

A. I never had.

MR. MARGIOTTI: That's all.

BY MR. COUGHLIN:

Q. Mr. Knight—

MR. MARGIOTTI: Wait a minute—just a minute.

BY MR. MARGIOTTI:

Q. I will get this cleared, I think I have it but I just want it—my client has suggested I ask it. The $3,000 dis-

(T. 975):

cussion first took place on April the 8th?

A. That is correct.

Q. All right.

BY MR. COUGHLIN:

Q. Mr. Knight, referring to April the 8th when you telephoned and talked to Homer Davis, who placed the call that day?

A. I did.

Q. And was the call placed directly to Homer Davis or to the Maxi Company?

A. It was placed to the Maxi Company.

Q. And who answered the phone?

A. Mr. Davis.

Q. Now, at the time you described the conversation of Michael and Reifsnyder to Mr. Homer Davis and he told you that he would have to consult the boss and you had told him that Mr. Reifsnyder was trying to get in the Navy, did he say anything else concerning a reason that might motivate the boss?

A. Well, he remarked, "you know I can understand that, I, too, have a son in the service, in the Air Forces, and the boss will be favorable to that for his grandson's sake."

Q. Now, Mr. Knight, when you made that telephone call did you make it in your capacity as attorney for the Maxi Company?

A. I did.

Q. And did you, at the time you talked to Homer Davis, advise him that in your judgment such a payment of $3,000 would be a proper one?

A. I did.

Q. Referring to April 24th. Between April 8th and April 24th did you have any conference with Homer Davis con-

(T. 976):

cerning the settlement of this transaction, which was to take place on April 24th?

A. To the best of my recollection, I had none.

Q. So that on April 24th was the first time you had talked to Homer Davis since April 8th, is that right?

A. To the best of my recollection it is.

Q. And when Homer Davis came with Mr. Max Long to your office that day, for what purpose did they come?

A. They came there for the purpose of paying out the Maxi money to pay these costs and allowances as made, and close up the whole matter and get all the papers, assignments, deeds, and bills of sale that were requisite to close it up, and obtain title.

Q. Did they know of any of the details involved at that time?

A. I would say little or none.

Q. In other words, Mr. Knight, it was a matter of making payments in accordance with the reorganization proceedings, which was under your care, for the Maxi Company?

A. That is correct.

Q. And whether or not on that day you were present there as their attorney and they were present there as your client representing the Maxi Company?

A. That was the only capacity in which we were present. I had no interest in the Maxi Company except being their lawyer and they were my client and were there for the purpose of carrying it out under my

(T. 977):

direction.

Q. And they followed your direction because you gave it to them as to the sums of money to be paid, did they not?

A. That is right, they so did.

Q. Now, after these payments were made your say that the parties left your office. Whether or not you gave any directions to either Homer Davis or Max Long concerning any of the papers that were to be executed and delivered that day?

A. Yes, I gave some to Homer Davis, I distinctly remember.

Q. What were those instructions?

A. Refreshing myself from my files and memos, there was a paper signed at my office by Mr. Michael to be delivered to Mr. Unangst, the cashier of the bank, assigning and transferring the bank account that was in the name of Michael, trustee of the Central, to the Maxi Company. There was another paper with relation to the $17,000 worth of bonds, authorizing Mr. Unangst to surrender the big bond, when there were a number of small bonds aggregating $17,000 to give out to the creditors, signed, also, by Mr. Michael, and those were both to be delivered to Mr. Unangst in order to perfect the transfer and the title, and I instructed Mr. Davis to see that they got to Mr. Unangst so he could take charge of the bank account and also get the big bond when he delivered the smaller ones.

Q. In other words, those were the last acts of settling the transfer completely?

A. So far as he was concerned, yes.

(T. 978):

MR. COUGHLIN: That's all.

MR. ROBINSON: I would like to ask a question.

BY MR. ROBINSON:

Q. Mr. Knight, from your testimony I do not recall that you have stated that George Fenner was ever present at any time in your office when Mr. Reifsnyder and Mr. Michael were there.

A. Yes.

Q. Let me finish.

A. I thought you had.

Q. Will you tell the jury whether Mr. Fenner was ever present at any time in your office when Mr. Michael and Mr. Reifsnyder were there discussing this matter?

A. I was about to say in the midst of your question, the answer to that is that Mr. Fenner was never present in my office when Mr. Michael and Mr. Reifsnyder were there except on the day of closing, April 24th.

Q. And the negotiations on behalf of the Maxi Company were conducted by you exclusively as their lawyer, is that right?

A. That is correct.

Q. That is, with Mr. Reifsnyder and Mr. Michael.

A. That is correct.

Q. And so far as you know, do you know whether Mr. Fenner was ever acquainted with the details of the negotiations and what happened there? So far as you know.

A. So far as I know I would say that he was not acquainted with the details, at least I made no effort to relate them

(T. 979):

to him or acquaint him with them because it was under-

stood as to that branch of their business I was specially employed and should take care of it.

* * * * * * * *

BY MR. PRATT:

Q. Mr. Knight, in connection with your testimony, both on direct examination and in cross-examination, you have

(T. 980):

characterized this revised plan of reorganization and have mentioned that the sum variation was insisted upon by Mr. Reifsnyder in a conversation along the 24th or 25th of February. That is true, is it not?

A. I stated that he insisted on taking out the reference to "January 1, 1942."

MR. LEVY: Keep your voice up, Mr. Knight.

THE WITNESS: Beg pardon.

MR. LEVY: You will have to keep your voice up, Mr. Knight.

MR. MARGIOTTI: That is your lawyer talking to you, not the judge.

THE COURT: He would hear me.

Q. After all, this plan was merely a sale of the assets of this bankrupt to the Maxi Manufacturing Company, was it not?

A. No, it could not have been a straight sale under Chapter X of the Chandler Act.

Q. I understand that, but haven't you stated on numerous occasions that the form that this so-called reorganization took was entirely a legal fiction and, therefore, by implication it was, in fact, merely a sale.

A. I wouldn't conclude that way, I would say—that I have made the statement on a couple of occasions—that it was a legal fiction, meaning that the bonds of the Max Company were given to the bondholders of the Central and then the holders of these

(T. 981):

new bonds could get their money by presenting them, if they so desired.

Q. And they had to take the money at once, or within 30 days or so or they would get no interest on the bonds, isn't that right?

A. I can't recall whether the bonds were drawn that way but if they were, the bonds will speak for themselves.

Q. So that when you mentioned the fact that it was a legal fiction, it was a subterfuge whereby the provisions of the bankruptcy act were evaded so far as a technical reorganization is concerned, or a practical reorganization is concerned?

A. I would not—

MR. LEVY: One minute, Mr. Knight, I object to the question and for the reason that when I asked Mr. Knight how he came to create this plan he began to tell about a conversation he had with the S.E.C., and the court said that was immaterial at the time.

THE COURT: We are not asking him that conversation now. I think he can answer the question without any difficulty and without bringing the S.E.C. into it.

A. My answer to your question is that it was a perfectly legal operation or plan and has since been approved by the courts in similar occasions.

Q. I am not questioning that, Mr. Knight, what I am say-

(T. 982):

ing is that in effect it amounted to a sale of those assets at a fixed price that had been agreed upon.

A. It did not.

Q. And that that fixed price was $26,404.33?

A. That was a maximum price which the Maxi Company was willing to pay for costs but that—

Q. And the actual amount that you paid in purchasing these assets, in effect, was $26,404.33, isn't that right?

A. Not that we paid for the assets, the actual amount paid out was really $28,000, including the money that they paid to me.

Q. The matter of the money they paid to you, the extra $2000, was for the purpose of making up what you claimed as your fees and which had been approved by your client, namely $7500, isn't that right?

A. It was for the purpose of paying me my fees, that is right.

Q. And of course every expense that was incurred in connection with this purchase would be charged on the books of Maxi against the purchase, whether fees or anything else?

A. I do not know how they charged it on the books. I had nothing to do with that.

Q. And isn't it a fact that when it came to this extra money, this $3000, that amount also was charged on the books of the Maxi Company against this sale?

A. I do not know how the books were kept. I was the lawyer and not the book-

(T. 983):

keeper.

Q. Now, in your testimony before Judge Smith in the contempt proceeding a year ago this last September, on page 52 you were asked, "Now, what was the purpose of that meeting on that day?" referring to April 24th.

And you said, "the purpose of that meeting was to pay out the money in accordance with the plan of reorganization and the several plans and schemes entered into, and to pay the fees and allowances and so forth."

Now, by schemes you referred, did you not, to the payment of the $3000?

A. That was a word that was suggested or used by Judge Smith to designate the payment of $3000 as distinguished from the plan of reorganization, and I adopted that word after it had been suggested by his honor, Judge Smith.

Q. You say that he used the word to designate the $3000?

A. He did.

Q. Wasn't it to characterize the $3000?

A. Well, you are getting on a question of definition of words, and I can't answer it.

Q. I withdraw the question.

THE COURT: I will stay out of it.

MR. PRATT: That's all, if the court please.

(T. 987):

GEORGE L. FENNER, SR., called and sworn in his own behalf, testified as follows:

Direct Examination

BY MR. ROBINSON:

Q. Mr. Fenner, where do you live?

A. I live in Wilkes-Barre.

Q. And whereabouts in Wilkes-Barre?

A. I live at 132 South Franklin Street, Wilkes-Barre.

Q. How old a man are you, Mr. Fenner?

A. I am 68 years of age.

Q. And are you a man of family?

A. Yes, I have a wife and by a first marriage I have three children, two daughters that are married and a son, a lawyer, now in the military service, and I have by second wife—

Q. Is that the George L. Fenner, Jr., whose name has been mentioned in the testimony here?

A. Yes, it is. And then I have three step-children by a second marriage, one of whom is serving in the Army in Manila, another, after serving two and a half years in the military service has been recently discharged, and a third son, a step-son, now on his way to Okinawa.

Q. You don't have anybody else in your family, do you?

A. That is quite enough.

Q. Where were you born?

A. I was born in Ashley, Pennsylvania, a town about two and a half miles from Wilkes-Barre.

(T. 988):

Q. And how long have you lived in Wilkes-Barre?

A. I lived in Wilkes-Barre since 1907.

Q. Now, were you educated in Wilkes-Barre?

A. Well, I received my education in the public schools at Ashley and then in a private school at Wilkes-Barre known as the Harry Hillman Academy.

Q. Did you attend a law school, Mr. Fenner, or did you study in an office?

A. I did not attend any law school or college, I studied law with Gains L. Halsey, who afterwards became a Common Pleas Judge of Luzerne County, and with Seligman J. Strauss, who afterwards also became a law judge of Luzerne County.

Q. And when were you admitted to the Bar?

A. I was admitted to the Bar of Luzerne County in January, 1902.

Q. The Bars of what courts are you a member of?

A. I am a member of the courts of Luzerne County, the appellate courts of Pennsylvania, the District Court, United States District Court, and that's all.

Q. And what is the extent of your practice, Mr. Fenner?

A. Well, I do not do much trial work, my work consists principally of work in real estate, Orphans' Court and an office practice.

Q. You have practiced continually in the law since 1902?

A. I have.

Q. With what church organizations are you connected in

(T. 989)

the city of Wilkes-Barre?

A. Well, I am president of the Board of Trustees of the Young Women's Christian Association of Wilkes-Barre, I am also a director of the Wilkes-Barre YMCA, and by virtue of that directorship I have charge, or I am head of the Board of Management of the South Branch, which is the colored work of the YMCA in Wilkes-Barre. And I am also Elder in the Presbyterian Church of Wilkes-Barre.

Q. Now I call your attention to the year of 1938 and ask you if you were familiar with a corporation known as the Central Forging Company.

A. Yes, I was.

Q. And what connection, if any, did you have with that company?

A. I was a director of the Central Forging Company some years previous to 1938, and also associated with John Olmstead of Harrisburg as one of the attorneys of the Central Forging Company.

Q. Did you have a financial interest in it?

A. Yes, myself and my wife had quite a substantial financial interest in the Central Forging Company.

Q. Now, in 1938 were you also familiar with a corporation known as the Maxi Company?

A. Yes, I was a director and general counsel of the Maxi Manufacturing Company, which had been incorporated in 1937.

Q. And did you have a financial interest in that, also?

A. I had quite a substantial interest in the Maxi Manufacturing Company, that is, myself and Mrs. Fenner at that time.

(F. 1909)

Q. Were there any other people who had an interest in connection with both concerns?

A. Yes. Mr. Fred R. Long had charge of the management, largely, of both companies; he was an engineer and he man who was gifted in the matter of patents and in control of certain machinery. Then we had F. Max Long, Mr. Homer N. Davis, Mr. M. J. Grimes and a number of other people interested in the companies.

Q. In both companies?

A. In both companies.

Q. Now, do you remember when the Central Forging Company went into State receivership, as has been testified to here?

A. I do, very well.

Q. And after that petition was filed in the United States Court for reorganization, do you remember that?

A. Yes. I was one of the petitioning creditors.

Q. And who was the trustee appointed by this Court for the Central Forging Company, do you remember?

A. The trustee first appointed to take charge under the United States Court of the matters of the Central Forging Company was Walter H. Compton of Harrisburg.

Q. And did he have an attorney?

A. Yes, his attorney, appointed by the Court, was Clare Groover of Lewisburg.

Q. Now, did you have anything to do with the litigation in that estate after the filing of the petition for reorganization?

A. Well, I appeared with Mr. William Kreisher at the first hearing held in this court before Judge Watson, and

(T. 991):

after that time I did not take any further action as attorney other than attending the various meetings, of which there

were a great many, in connection with various matters pending incident to that reorganization.

Q. Now, do you know Mr. Harry S. Knight of Sunbury?

A. I do.

Q. And do you remember when he was appointed to represent, or employed to represent the Maxi Company?

A. I do.

Q. Can you tell us just about when that was, if you can?

A. No, I cannot tell you the exact time but I can tell you the incidents leading up to his appointment if you desire.

Q. Well, go ahead, no one has objected yet.

THE COURT: That is a fair test, I guess.

A. The Central Forging Company and the Maxi Company were represented principally by attorneys who were not residents of Columbia County, and in order to have counsel for these companies who were residents and members of the Bar of Columbia County, there were certain resolutions leading to the appointment of a member of the Bar of Columbia County, one, A. W. Duy—that is spelled D-u-y. That is the gentleman that Mr. Knight referred to in his testimony yesterday, that he was called to his office and employed as counsel. Mr. Duy suggested the appointment in the matters incident to the Maxi Company and the Central Forging Company, suggesting the appointment of Harry S. Knight of Sunbury.

Q. I think at that time there was an Appeal to the (T. 992);
Circuit Court of Appeals pending and that's why Mr. Knight was hired?

A. The first work he took on for the Maxi Company, and for the directors of that company, was in connection with the receivership in the Columbia County courts. Then followed the work for the reorganization proceeding, representing the petitioning creditors.

Q. Now, Mr. Fenner, after Mr. Knight took charge of the proceedings did you have anything to do with reorganization in a legal way?

A. No, other than I say, attending the various meetings, but Mr. Knight carried on as attorney for the petitioning creditors all the steps in the litigation.

Q. Yes. Now, do you remember when Mr. Compton resigned and another trustee was appointed?

A. I remember very well.

Q. And what was the date of that, if you remember?

A. That was the end of the year 1941, Mr. Walter Compton could no longer serve as trustee.

Q. And do you know who was appointed?

A. Yes, Mr. Robert Michael of the vicinity of Scranton.

Q. Yes. And do you know who was his attorney?

A. Yes, his attorney was J. Donald Reifsnyder.

Q. Did you ever know any of these men before their appointment in this case?

A. I did not know Mr. Michael, and I do not recall having met Mr. Reifsnyder before that time.

Q. Now, when was the first time you ever saw Mr. Michael,

(T. 993):

can you tell us?

A. I met Mr. Michael at Catawissa in the forepart of the year 1942.

Q. Whereabouts in Catawissa?

A. At the plant of the Central Forging Company, as I recall.

Q. And when did you meet Mr. Reifsnyder for the first time?

A. I believe at that same time at the same place.

Q. Was anything said or done there about the question of the reorganization?

THE COURT: At the time of the first meeting, you mean?

MR. ROBINSON: Yes, your Honor.

A. I do not recall what was said particularly at that meeting, I do not recall now.

Q. At any time during the period between January the 1st, 1942 and April the 24th did you have any discussion with these men regarding the plan for reorganization and how it was going to work out and so on?

A. Well, I had very few contacts with Mr. Michael. I met on several occasions at Catawissa, at either the Maxi Manufacturing plant or at the Central Forging plant, Mr. Reifsnyder, attorney. I had a number of conversations with him, either dealing with social matters or matters incident to the reorganization. I felt that I got to know him fairly well. He soon got to calling me George and I got to calling him Don. We had a number of conversations at Catawissa with Mr. Reifsnyder.

(T. 994):

Q. Well, was anything said there about the sale of the assets or the amount of the assets or the plan of reorganization, did they discuss that matter with you?

A. They did not discuss that matter with me. They were there at times when I also would get down to Catawissa, so I visited in a social way, principally, with Mr. Reifsnyder.

Q. More social—

THE COURT: Let me ask you, so we will fully understand the nature of these meetings at Catawissa: Are we to understand that your going to either the Central Forging Company or the Maxi Manufacturing Company was on business other than the reorganization? Is that right?

THE WITNESS: Yes, sir.

THE COURT: And that your meeting with Reifsnyder and Michael was coincidental and not planned, is that it?

THE WITNESS: Yes, sir.

THE COURT: I just wanted to get it clear.

MR. ROBINSON: I was going to get to that in the next question.

THE COURT: I don't understand men meeting periodically if they have nothing to do with this and not discussing it, that was all.

Q. Now, did you attend any of the meetings at Mr. Knight's office at which Reifsnyder and Michael were ever present except
(T. 995):
the meeting of April the 24th?

A. I never attended any meetings with these gentle-

men at Mr. Knight's offices except the meeting of April 24th.

Q. And did Mr. Reifsnyder and Mr. Michael or Mr. Knight discuss with you, or tell you what had gone on at any meeting?

A. They did not.

Q. What was the purpose of your visits to Catawissa, Mr. Fenner?

A. Well, I was interested in the Maxi Manufacturing Company, we had certain matters of financing the company which were rather pressing in its early organization and at that particular time we had various matters to attend to in connection with additions to buildings and very many things that had to be done in connection with the development of the Maxi Manufacturing Company.

Q. Were you at that time engaged in any particular work or assisting in any particular work for the Maxi Manufacturing Company other than this reorganization?

A. Oh, yes, there were a number of various applications for financing. There was an application made to the R.F.C., which was refused, which entailed the preparing of a number of papers, and then later applications made with the Federal Reserve Bank in Philadelphia, which resulted in a series of loans made to the Maxi Manufacturing Company through the instrumentality of the combined assistance of the First Federal Bank of Philadelphia and Catawissa National Bank.

(T. 996):

Q. What was the purpose of making these loans?

A. Well, certain of them were in connection with—

MR. BROOKS: I object to that, the purpose of them.

MR. ROBINSON: I want to find out whether it was for paying for this merger, or whatever you call it.

THE COURT: I don't think it is material. It makes no difference how they got the money, maybe they raised it by borrowing, but that is not material to the issue here.

MR. ROBINSON: No, it is not material but it is material for what purpose he was down there for.

MR. BROOKS: He asked the purpose of the loan, if your Honor please.

THE COURT: Suppose he was assisting them to get a loan?

MR. ROBINSON: That is the reason for his visits to Catawissa; that is the only purpose.

THE COURT: I don't see why, whether the money was to be used for Central Forging or not isn't material. There isn't anything illegal about making loans, I understand, it is a common practice.

Q. Now, Mr. Fenner, I call your attention to the date of April the 10th, 1942, and ask you if you were in Catawissa that day.

A. Yes, I arrived in Catawissa on the evening of April 10th.

(T. 997):

Q. Now, will you tell the Court and jury what happened, where you were and about what time it was?

A. I couldn't fix the time exactly but I know it was on the evening of April 10th that I went to the office of the Maxi Manufacturing Company and I met there Mr. Homer N. Davis, who took me to a room which he called the Maxi House and there I was shown a letter which had been written to Mr. Davis from Mr. Knight and I looked at the letter, put it down on the table and I spoke to Mr. Davis and told him that the suggestion made in there of my son, George L. Fenner, as an intermediary in the payment of any money I would not stand for.

THE COURT: Is that letter here?

MR. MARGIOTTI: That is the letter that was read.

THE COURT: Show him and see if that is the same letter he has in mind.

Q. Mr. Fenner, I call your attention to Government's Exhibit G-2-B and I ask you if that is the letter to which you refer.

A. This is the letter to which I refer in connection with my visit to Catawissa on the evening of April 10, 1942.

Q. Rather, that is a copy of the letter.

A. This is a copy of the letter, yes, sir. Pardon me, a copy of the letter.

Q. And you say that after you saw the letter you laid it on the table?

A. Yes, sir.

Q. Did you ever see that letter again?

A. No, I never did. The first time I saw a copy of the letter, I had forgotten

(T. 998):

about the letter and I charged my mind with all its contents, was in the meeting of the Grand Jury in the summer of 1944 when the letter was shown me by Mr. Goldschein.

Q. That is, a copy of the letter?

A. A copy was shown me by Mr. Goldschein.

Q. Now, after you told Mr. Davis that you would not let your son go along, was there anything else said?

A. I do not recall what was said at that time. I cannot recall because it is not so easy to separate the conversations which I had with Mr. Davis from time to time, separate them as to the one that I might have had on the evening of April 10th.

Q. Now, did you say you would or would not consent to act as an intermediary then?

A. I said I would not at that time.

Q. I see. And what did you do after that, go home or stay there or what?

A. What is that?

Q. Where did you go after that?

A. I do not recall. Generally when I went to Catawissa I went into a conference with Mr. Fred Long or other men of the management and organization.

Q. Did you later come home that evening, back to Wilkes-Barre?

A. I did.

Q. Yes.

THE COURT: This might be a good point for us to go home, too.

(T. 1002):

Q. Mr. Fenner, yesterday when we adjourned you told us that on the 10th of April you had seen a letter at Catawissa in the Maxi Manufacturing Company. What part of the Maxi Manufacturing Company was that that you—what part of it were you in at the time that you saw that letter?

A. It w a room above the office of the Maxi Manufacturing Company.

Q. And is that Mr. Davis's regular office?

A. No, it

(T. 1003):

wasn't the regular office, it was the room above the office.

Q. I see. How many times did you read that letter?

A. I just read it that one time.

Q. And laid it on the—

A. On the table there in that room.

Q. On the table. I think you said you never saw that original letter after that, is that correct?

A. I never did.

Q. And I think you told us that you told Mr. Davis that you wouldn't go along with the proposition of being an intermediary, is that correct?

A. I told him I would not consider having my son go along as being an intermediary; that is, George L. Fenner, Jr. I did not say whether I would go along at that time or not. I did not.

Q. I see. Now, did you have any reason to believe, from your recollection of the letter, that there was anything wrong in the reduction of any accounts receivable or any other assets of the estate?

MR. BROOKS: I object to that, if your Honor please, he believes. It calls for a conclusion.

Q. Did you have any reason to know?

THE COURT: I will let him answer that.

A. I did not.

Q. And I think you testified—

THE COURT: You had no suspicion that there was anything wrong in this transaction?

(T. 1004):

THE WITNESS: I did not.

THE COURT: But yet you weren't willing to let your son participate in it?

THE WITNESS: To be intermediary, yes, in the payment as suggested in the letter.

THE COURT: All right, go on.

Q. Now, after you got home from Catawissa on the 10th did you talk to anybody after that time, or did anybody talk to you about this matter?

A. Nobody talked to me until at some period between April 10th of '42 and April 24th, I cannot fix the exact date. I was called on the telephone by Mr. Donald Reifsnyder at my office.

Q. And did you talk to anybody else concerning this letter at any time between the 10th and the 24th?

A. I did not.

Q. Now, at that time what was your relationship with Mr. Reifsnyder, if any?

A. Well, I hadn't known Mr. Reifsnyder before he got into the Central Forging Company reorganization proceeding. I found him, in my contacts with him, a very fine personality, very energetic, and I had reason to feel that he was to be relied upon, he appeared to me as a man whose judgment could be taken and I had great confidence in him.

Q. And what was said in the telephone conversation you refer to?

A. After some salutations over the phone Mr. Reifsnyder asked me whether I had been contacted in regard to a check, and I told him that I had. He asked me, "How do you

(T. 1005):

feel about it?"

I told him I didn't like the idea as advanced at all. Then he started to advance certain arguments to me.

Q. Tell us what he said, if you can remember it.

A. He said, "You know that $500 will have to be paid to Hervey Smith and I have learned that Clare Groover is not satisfied wtih the amount that he is to get and that John Crolly is complaining about his amount." He said that he was trying to get his matters all cleaned up, this matter finished up, and other business matters finished up, he felt that he would be taken in the service, he was contemplating joining the Navy and he wanted to get as much together as he could for the protection of his wife and his children.

Well, I carried on further conversation with him, I didn't care so much about it but if it was to be done in con-

nection with the matter by himself and Mr. Knight, I would go along.

Q. Did you ask him if there was anything wrong about it?

A. Pardon me. At the time of that conversation, further he did this, he said, "The date that is fixed for the meeting down at Catawissa is April 24th and Mr. Michael will drive down and that he and I will stop for you."

I said, "My residence is 346 South Franklin Street. What time will you pick me up?"

(T. 1006):

He said, "9 o'clock on that morning."

So I had a memorandum book in my pocket, which I carried, and I made the entry of the date and of the hour. He afterwards called me on the telephone, at a later date, and changed the time from 9 o'clock to 8:30 of that morning.

(Exhibit D(F)-1 marked for identification.)

Q. Now I show you Defendant's Exhibit D(F)-1 and ask you if that is the memorandum book to which you refer.

A. That is the memorandum book.

MR. ROBINSON: If the Court please, I now offer it in evidence.

THE COURT: Let Government counsel see it.

MR. BROOKS: No objection.

(Exhibit D(F)-1 received in evidence.)

Q. And whether or not you made [illegible] entries in that book?

A. I did.

Q. And what does the entry state?

A. The date of "Friday, 24 April, 1942, Don Reitsnyder 9 A.M.," and over that "8:30 A.M."

Q. And the 8:30 A.M. was written over for what reason?

A. Because in the subsequent telephone call the hour of our meeting was changed.

Q. Now, at that time were you acquainted with the provisions of the plan for reorganization?

A. I was.

Q. And did you know that some of the provisions had already been carried out?

A. Yes, I knew that the $17,000

(T. 1007):

had been deposited some time in March of '42 at the Catawissa National Bank, or with the cashier of the bank, because I had to do with the raising of the money.

Q. And did you know, as was testified here by Mr. Knight, anything about how the balance was calculated or what figures were used, or what was added or deducted to determine the amount that was to be paid on the 24th?

A. I did not.

Q. Now, what happened—and this memorandum book, D(F)-1, whether or not you turned that over to the Government during the investigation of this case?

A. I did. That is a memorandum book furnished by the Wyoming National Bank of Wilkes-Barre, has been furnished each year for a great many years and given to the

members of the Bar and all of us carry it to keep memoranda in.

Q. Now, I call your attention to the 24th. Did you see Mr. Reifsnyder and Mr. Michael on that day?

A. I did, they called at my house on the morning, in an automobile, on the morning of April 24th.

Q. At what time, Mr. Fenner?

A. Well, I can't give you the exact hour of their arrival at my home. I, myself, tried to be ready to go with them at 8:30 in the morning.

Q. And who was driving the car?

A. Mr. Michael.

Q. And where were you sitting?

A. I sat in the rear seat of the automobile.

Q. Where was Mr. Reifsnyder?

A. Mr. Reifsnyder sat

(T. 1008):

alongside of Mr. Michael in the front seat.

Q. What was said going down in the car to Catawissa about this matter?

A. Well, as I have said before, we carried on a pretty general conversation, the details of which I do not all recall but there was a talk about certain matters incident to reorganization and Mr. Reifsnyder turned back and said that, "If this $3,000 is to be paid through you there will be an item of income tax to be considered."

Q. Now, did you give any thought to that before?

A. I had not.

Q. And then what was said and done about the income tax?

A. Well, we discussed it in the car, as to ways of ar-

riving at what income tax there might be, and did not finish it on our ride but we talked it further after we had arrived at the office of Mr. Knight.

Q. And what decision was made about it?

A. They were to pay me $500 to be used to defray income tax.

Q. Now, did you go directly in the car to Sunbury or did you stop at some other place?

A. We stopped on the way at Catawissa and there I left these gentlemen and went from Catawissa to Sunbury with Mr. Max Long and Mr. Homer Davis.

Q. In another automobile?

A. In Mr. Max Long's automobile.

Q. Now, did you arrive at Mr. Knight's office at or about the same time that Michael and Reifsnyder got there? (T. 1009).

A. Yes, as I recall, we arrived pretty nearly the same time at the office. That was the morning of April 24th.

Q. And you went up into the office, did you?

A. Yes.

Q. And who was present there?

A. Mr. Knight, Mr. Reifsnyder, Mr. Michael, Mr. Max Long, Mr. Homer Davis and myself.

Q. Now, will you tell the Court and jury exactly what happened there as best you can recall it?

A. Well, the session at Mr. Knight's office lasted from the time we arrived in the morning, say 10 or 10:30 in the morning, until we left to go to the Catawissa National Bank shortly before 3 o'clock on the afternoon of that day.

Q. Did you take time off for lunch?

A. Yes, took some time out to eat lunch and visited at the place where we lunched.

Q. And in what part of Mr. Knight's office was the conference taking place?

A. Well, different matters were handled throughout the suite generally. There was drawing of certain papers, the correction of certain papers, and the matter of drawing of the checks took place in an office to the right of Mr. Knight's private office where he generally advised clients, as I would take it, and in that was a long table.

Q. It was termed here before as the library room. Does that refresh your recollection?

A. One part of the library. I think Mr. Knight has libraries that extend into, well, it

(T. 1010):

might be more than one office of the suite.

Q. And who was attending to the legal work in drawing the papers and correcting the papers? Who attended to that?

A. Well, most of the matters were carried on by Mr. Don Reifsnyder and Mr. Knight.

Q. Now we come to the writing of the checks. Who wrote out the checks?

A. As I recall, Mr. Davis had with him a check book and checks were drawn, I don't recall the details of them or the amounts, but checks were drawn by Mr. Davis and then I think handed to Max Long to be countersigned by him.

Q. Did you pay any attention to the amount of the checks or the payees in the checks that you can remember now?

A. No, I did not. I might have heard some amounts called out and checks written but I was not paying very strict attention to that.

Q. Now, was there a check payable to you?

A. There was a check drawn to my order for $3,000 on that date.

Q. And what did you do with that check, Mr. Fenner?

A. I went to this table and endorsed it and left it there.

Q. Do you know who picked it up or carried it away?

A. I did not see the check after that.

Q. Now, did you have any further matters with Mr. Reifsnyder in Mr. Knight's office that morning or afternoon?

A. Well; I was somewhat interested in the bill of sale and the deed, I thought it was my duty to examine them, and I did, as

(T. 1011):

far as those particular papers were concerned.

Q. Did you say anything about being the third party at that time?

A. I hadn't much to say at that particular conference except around the room I might have said something to Mr. Davis and Mr. Long about I didn't like the matter of my being intermediary, that is, as we were around the room during the time of the drawing of certain papers.

Q. Now, did you have any financial transactions with Mr. Reifsnyder there in the office?

A. Yes. Mr. Reifsnyder handed me $500 in cash.

Q. And what was that $500 to be for?

A. Well, it was, under the theory of that payment, it was to cover the payment of income tax.

Q. That was before you went to the bank; is that right?

A. Yes, sir.

Q. And do you remember what time you left the office to go to the bank?

A. No, I do not recall the distance from Sunbury. As I recall, we arrived at the bank just about closing time, as I thought, a little before closing time.

Q. And who did you go to the bank with? I mean, who did you drive from Sunbury to Catawissa with?

A. Mr. Homer Davis and Mr. Max Long.

Q. And when you got there did you see Mr. Michael and Mr. Reifsnyder there?

A. They came into the bank, I don't know whether they were there before us or after.

(T. 1012):

Q. And what part of the bank did you go to?

A. We went to the directors' room in the bank.

Q. And what happened when you were in the directors' room, Mr. Fenner?

A. As I recall, certain papers were given to Mr. Unangst, the cashier, and in a little while Mr. Unangst, the cashier, came in with some currency, some money, six packages of bills, and laid them on the directors' table.

Q. Were there six individual packages?

A. Yes, there were, they were in wrappers, bank wrappers, all six of them.

Q. In the ordinary bank wrappers?

A. Yes.

Q. Money straps. And what happened to the money?

A. Mr. Reifsnyder and Mr. Michael went over and counted the money, and Mr. Reifsnyder picked up one bundle and put it in his pocket, pants pocket.

Q. What happened to the rest of it?

A. I do not remember just what was done with the

rest, I don't know just which one of the men took it, but it was being counted by Mr. Reifsnyder and Mr. Michael.

Q. And Mr. Michael testified that you stepped up to the table and took some of the money at the bank, is that true or is it not?

A. I did not take money at the bank.

Q. Now, was there anything done by Mr. Reifsnyder in regard to any telephone call at that bank?

A. Yes, he was going to call, he said he was going to call Mr. Smith, meaning Mr. Hervey Smith, and asked Mr. Unangst where a telephone was,

(T. 1013):

and there was a telephone in that room. So he went to the telephone and the part of the conversation that we could hear is that he wasn't at his office, he was at the Bloomsburg Country Club, or at the country club.

Q. And did you leave the bank at about that time?

A. Yes. I had somewhat to do with some papers I wanted to instruct Mr. Homer Davis to have recorded. There was a deed in connection with this transaction I wanted him to have recorded; and I went with Mr. Michael and Mr. Reifsnyder in the automobile.

Q. Where did they drive to?

A. We drove over to the Bloomsburg Country Club.

Q. And what happened there?

A. We drove up into a road that skirted the club, or went through it, and as we got to a certain point Mr. Reifsnyder said, "Well, there he is;" and they got out of the car, that is, Mr. Michael and Mr. Reifsnyder got out of the car and went away and I remained in the car.

Q. You didn't get out at all?

A. I did not.

Q. Did you see who they met?

A. I did not, I couldn't see from where I was who they met.

Q. Then what happened?

A. Then they came back and got into the car and we drove to Wilkes-Barre, where they let me out of the car and went on their way.

Q. Now, during the ride from Catawissa to Bloomsburg and

(T. 1014):

then to Wilkes-Barre, was anything said by or between Mr. Reifsnyder and Mr. Michael concerning the division of any money at all?

A. No, sir, not in my presence.

Q. Did Mr. Reifsnyder there have any yellow pad and pencil and was doing any figuring, when you were there?

A. No, sir.

Q. What time did they leave you out of the car?

A. Well, it was in the vicinity, I would say, of 7 o'clock or 7:30. I wouldn't be too positive about the hour.

Q. And where did you get out?

A. I got out at my home on South Franklin Street, Wilkes-Barre.

Q. Was it dark at that time or what was the state of the illumination?

A. I can't recall just how dark it was or how—it was that hour, around 7 or 7:30 on the night of April 24th.

Q. And when did you see Mr. Reifsnyder and Mr. Michael after that, if you did see them?

A. I do not recall seeing either of them, although I might have; I don't recall seeing either of them until

I met them in the corridor of this building some time in the summer of 1911.

Q. That would be two and a half years, or almost two and a half years after?

A. Yes.

Q. Did you know at any time how Mr. Michael was appointed as a trustee in this case?

A. I did not.

Q. Did you know whether he was talked to by Donald (T. 1015): Johnson, and then went to see Judge Johnson at the suggestion of Donald?

A. I did not.

Q. Did you know how Mr. Reifsnyder was appointed?

A. I did not.

Q. And did you know whether or not he was suggested to Mr. Michael by Donald Johnson?

A. I did not.

Q. Did you know anything about the meetings between Reifsnyder and Michael and Mr. Knight in Mr. Knight's office?

A. You mean the meeting of April 8th?

Q. No, the meetings before April the 24th.

A. I did not.

Q. And did you know of any other conversations or agreements or understandings that were reached there?

A. I did not.

Q. Did you know that on an automobile trip on February the 13th from Harrisburg to Scranton, at a time after midnight, Mr. Reifsnyder is alleged to have talked about taking care of Donald Johnson in some way?

A. I never heard of any of those matters until testified in this court.

Q. And did you know that at that time he is alleged to have stated that he could "set up a fund to take care of him without splitting any fees"?

A. I did not.

Q. Did you know that on February the 19th Mr. Michael is alleged to have called up Mr. Johnson by long distance telephone from the country club at Scranton to Middleburg and asked him if he knew about the plan to set up a fund and that

(T.1016):

he was agreeable to it, or anything that was said?

A. I did not.

Q. Did you know of any meeting between Mr. Knight and Reifsnyder on April the 8th at which they agreed that you were the logical man?

A. No. The only knowledge I had of anything connected with that was that certain letter of April 9th or 10.

Q. Yes. But at that time you didn't know it?

A. I did not know of any meeting between the gentlemen at Sunbury on April 8th.

Q. Did you have anything to do with filing the report of the successor trustee in this case?

A. I never saw the report.

Q. Or the first and final account?

A. No, I never had anything to do with the filing of that.

Q. Did you know that a false report was to be filed?

A. I did not.

Q. Did you know that Mr. Reifsnyder and Mr. Michael,

between them, had agreed to contribute the $500 that Mr. Hervey Smith was supposed to get?

A. I did not. I knew the payment was to be made to Mr. Hervey Smith but I knew nothing about that particular detail.

Q. Now, when they left you out of their car on April 24th did you know that it took them an hour to drive from Wilkes-Barre to Scranton that night?

A. I did not.

(T.1017):

Q. And that during the course of that drive Mr. Reifsnyder was calculating division of fees and other funds between he and Mr. Michael and Mr. Donald Johnson?

A. I knew nothing about those matters at all.

Q. Did you know that he at any time computed any such division and kept a record of it in his files?

A. I did not at that time, no.

Q. Until this case came up, I mean. At that time did you know anything about it?

A. I did not.

Q. Did you know that the next day, Saturday, April the 25th, Mr. Michael went to Reifsnyder's office and that they had financial transactions there, exchanging checks, and at that time that Mr. Michael gave Reifsnyder $591 in cash?

A. I did not. Never heard of it until testified here.

Q. And did you know that on the afternoon, Saturday, April the 25th, Donald Johnson is alleged to have called Michael on the long distance telephone from Middleburg to the country club at Scranton and asked him whether the deal was finished, and that Michael said, "You will have

to see Don Reifsnyder"? Did you know anything about any such thing?

A. I did not know anything about any of those transactions.

Q. Did you know that on the next day, Sunday, April the 26th, Mr. Johnson and Mr. Reifsnyder and Mr. Michael were alleged to have met at the Scranton Country Club at which they wrangled over some division of fees, and finally came to some

(T. 1018):

kind of an agreement on it? Did you know anything about that?

A. I did not.

Q. Did you know, Mr. Fenner, that anybody was to be defrauded by this matter that took place on April 24th?

A. I did not.

Q. Did you aid, counsel, induce, procure Mr. Michael to misappropriate any funds in the Central Forging Company?

A. I did not.

Q. Did you knowingly aid, abet, counsel, procure, induce him to transfer, unlawfully, any assets to defraud the estate?

A. I did not.

Q. Did you ever conspire with anybody to do these things?

A. I did not.

Q. Did you ever defraud anybody in your life?

A. Not knowingly.

MR. ROBINSON: Cross-examine.

G. L. Fenner—Cross

Cross Examination

BY MR. BROOKS:

Q. Mr. Fenner, I believe you stated yesterday that you are a director of the Maxi Company?

A. Yes, I did so state.

Q. And you have been a director of that company for how long?

A. Since 1937.

Q. And you still are a director?

A. Yes, sir.

Q. Were you also a director of the Central Forging Company back in 1938?

A. Well, yes, I would say I had been elected to the Board of Directors for the period previous to

(T. 1019):

the receivership in the Columbia County courts. I could answer your question that I felt that I was a director at that time.

Q. And having been elected, why, you felt that you were a director?

A. Yes.

Q. Well, how long did you remain a director; until the matters closed of the reorganization?

A. Well, nothing was ever done about the corporate matters of the Central Forging Company in connection with any meeting of directors or anything until after the receivership was instituted in the Columbia County courts. That is, we had no directors' meetings.

Q. Now, you stated, also, on your direct testimony that the Board of Directors of the Maxi Company employed Mr. Knight as attorney for the company. Is that correct?

A. Mr. Knight was employed; whether there was any particular definite action by the board, I am not prepared to state at this time. He was regarded as the counsel of the Maxi Company and did work for the Maxi Company.

Q. Well, when was it that he was first regarded as counsel for your company, the Maxi Company?

A. Well, the petition for reorganization was joined in by three interests, myself as one of the creditors, F. Max Long as a creditor, and the Maxi Manufacturing Company. In connection with Mr. Knight, the fact that the company was one of the petitioning creditors,

(T. 1020):

we regarded him as the counsel of the company and so continued until a period when he took on certain of the work as counsel to relieve me when I had a certain personal reason to not be in attendance for the work of the company at that time, covering a period up until the death of my first wife in July, 1941.

Q. Well, now, do you mean to say, then, that the Maxi Company regarded Mr. Knight as its attorney beginning with the filing of the original petition in the bankruptcy proceedings? Is that correct?

A. No, I didn't say that he was from the time of the filing of the petition.

Q. I am trying to fix a date.

A. I have said, and it has been testified, that Mr. Knight did not come into the reorganization proceeding until after it had been started for some period, say a month or so, a month or two probably.

Q. That would have been soon after August of 1938, then, that he came into the bankruptcy proceedings?

A. The preliminary proceedings before Judge Wat-

son were conducted by William Kreisher of the Columbia County Bar, representing the petitioning creditors. Then Mr. Duy suggested having Mr. Knight as representing the petitioning creditors, and had also been brought into the picture as representing the Maxi Company and certain directors of the Maxi Company in the Columbia County court proceeding. He was used as counsel for the company at a time when, I say, for a personal reason I could (T. 1021):

not give my full attention to the work of the company and he, being more convenient, being at Sunbury, he carried on as counsel for the company in addition to his work in the reorganization proceeding.

Q. Well, Mr. Fenner, you haven't yet even approximated a date for me when the Maxi Company employed him or regarded him as their attorney.

A. Well, I tried to approximate it the best I could It was several months after the starting of the proceeding in August, 1938.

Q. And before that time had the Maxi Company ever employed Mr. Knight as its counsel?

A. No, sir.

Q. Had it ever regarded him as its counsel, your term, regarded him as their counsel? You mentioned that a while ago.

A. You mean before what date?

THE COURT: The date that you speak about, before 1938.

THE WITNESS: Before 1938?

Q. Yes, sir.

A. No.

Q. So, soon after August, 1938, is the first time that the Maxi Company ever used or employed Mr. Knight as its attorney?

A. Yes, sir.

Q. You had been attorney for it prior to then, had you not?

A. I had been attorney for the Maxi Manufacturing Company prior to that.

Q. Yes. Now, when you employed Mr. Knight, the directors

(T. 1022):

of the Maxi Company employed him or retained him in the latter part of 1938, just what were his duties to be? Just what was he to do as your attorney?

A. He was to carry on the proceedings in connection with the reorganization proceeding and to represent the directors in connection with the Columbia County court proceeding, a proceeding which had joined the Maxi Company with directors of the Central Forging Company.

Q. And how much was your company to pay Mr. Knight for those services?

A. No definite amount had been fixed for payment.

Q. And was it ever discussed with you, as a director of the Maxi Company, the employment of Mr. Knight?

A. Yes.

Q. Now, who discussed it with you?

A. We met, a group, at the office of A.W. Duy in Bloomsburg and the matter was discussed at that office.

Q. And who was in that group, please?

A. In that group, as I recall, was a Mr. Barker from Harrisburg—

Q. Was he a director of the Maxi Company?

A. No, he wasn't, he was not a director of the Maxi Company, he was a man who was a director of the Central Forging Company and had been joined as one of the parties in the Columbia County receivership. Then there was a Mr. John Olmstead, who was an attorney at Harrisburg, who was also a director of the Central Forging Company, and brought in as a party in the

(T. 1023):

Columbia County equity proceeding; and myself and Mr. Fred Long, as I recall. I do not recall whether anyone else was in that conference.

Q. Just two directors of the Maxi Company were in the conference, is that correct?

A. As I recall, yes.

Q. How many members did the Board of Directors have the Maxi Company Board of Directors have?

A. At that time I believe we had seven.

Q. And it was at that conference that it was decided to retain Mr. Knight as counsel for the Maxi Company?

A. That was the start of it, yes.

Q. Well, tell us all about it. What was the finish of it?

A. Well, we probably had the matter discussed at some meeting of the group, who were of the board of the Maxi Company, and a decision made to have him act in these proceedings.

Q. And was that action spread on the minutes of the corporation?

A. I cannot tell you that.

Q. And can you recall whether there was any discus-

sion at that time or any time that the matter was discussed by the members of the Board of Directors, anything about the fee to be paid Mr. Knight?

A. I do not recall any conversation in regard to fee to be paid to Mr. Knight at that time.

Q. But he was —

A. (Continuing): I know that Mr. Knight was in attendance at Mr. Knight's office and I know he

(T. 1024):

kept a record of the conferences that were held.

Q. So Mr. Knight was to handle the receivership matter of the Columbia County court proceedings and all things like that?

A. Yes, sir.

Q. And that was to come under his duties for which the Maxi Company had employed him. That is what you stated a few moments ago?

A. That was part of the work that he did.

Q. Yes. Well, can you state any other work he was to do under that employment?

A. He was to carry on steps in the reorganization proceeding and also to do work for that group in connection with the Columbia County receivership.

Q. And he was to be paid a fee for that by the Maxi Company?

A. There was no preliminary arrangement about that, as I recall, other than we retained him.

Q. You were going to pay him for it, though, were you not?

A. Yes, I think everybody expected that Mr. Knight would be paid.

Q. And did he have anything to do with the litigation in the Circuit Court?

MR. LEVY: If your Honor, please, I haven't made any objection here but it does seem to me that they have gone far afield on the employment of Mr. Knight and about conversations in Mr. Duy's office not in the presence of Mr. Knight. There is no charge here that this is part of the conspiracy, a conversation of the Board of

(T. 1025):

Directors of the Maxi Company not in the presence of Mr. Knight. It seems to me every bit of that testimony is objectionable and should be stricken. It is cluttering up the record.

THE COURT: I don't know, I haven't heard anything that would be particularly prejudicial; have you?

MR. LEVY: No, I haven't but I just don't want the matter delayed by a cross-examination of a lot of things that we are not interested in.

MR. MARGIOTTI: It doesn't make any difference.

MR. LEVY: No, I know, and I am sorry I said anything about it.

THE COURT: I assume that Mr. Brooks is leading to the ultimate, Mr. Fenner's knowledge or lack of knowledge of these things. Mr. Fenner has denied any knowledge of these things. I don't know. I suppose that his knowledge becomes very important. I mean,

he has, in effect, except for receiving the check, pleaded ignorance. Of course, I agree that conversations are not admissible, are not material, couldn't bind anybody except those made in the course of the conspiracy, if there was a conspiracy.

MR. LEVY: This is 1938.

MR. BROOKS: If your Honor please, I was asking him about certain acts, I didn't ask him about any con-

(T. 1026):

versations, he contributed that, I didn't ask him about it and I wouldn't.

Q. Now, after that employment of Mr. Knight to handle certain steps in the bankruptcy matter, did you have many discussions with Mr. Knight pertaining to the proposed bankruptcy proceedings?

A. Yes, I had some discussions with Mr. Knight in connection with the proceedings because the proceedings covered a period from 1938 up until we had this new trustee, up until January, 1942. I think I could say I had some discussions with Mr. Knight with regard to matters that were incident to the reorganization proceeding.

Q. And do you recall when Mr. Michael was appointed trustee, successor trustee?

A. Yes, I remember when Mr. Michael was appointed successor trustee.

Q. And when did you learn that for the first time, before he was appointed or afterward? Do you know?

MR. ROBINSON: The form of that question is

objected to, to ask him if he knew when, whether he knew before or after he was appointed.

MR. BROOKS: I will reframe the question.

THE COURT: Let the question be stricken and Mr. Brooks reframe it.

Q. Did you know, before Mr. Michael took his oath of office, that he was going to be appointed successor trustee?

A. I did not.

(T. 1027):

Q. And how soon after his appointment was it that you learned about it?

A. I can't tell you that.

Q. Do you recall that he came and discussed the matter with you after his appointment, he came to Catawissa and talked to you?

A. Yes. I was at a meeting when he came to Catawissa shortly after his appointment.

Q. And did you have a discussion with him with respect to the bankruptcy of the Central Forging Company?

A. Well, I cannot recall now just what took place at that meeting when we met Mr. Michael at the Central Forging Company plant shortly after the first of the year of '42. I can't recall just what was said or done.

Q. What meeting do you refer to, Mr. Fenner?

A. Well, as I recall, I was present when Mr. Michael came down to the plant shortly after his appointment.

Q. And you had a discussion with him, or talked to him about the proposed reorganization or handling of the company in bankruptcy, didn't you?

A. No, I didn't. I just met him there and learned of

the fact that he had been appointed. I carried on no discussion with him with regard to the reorganization of the bankruptcy.

Q. You didn't discuss it with him at all?

A. Not that I can recall. There might have been something said about the reorganization, I can't recall just what was said at that meeting.

(T. 1028):

Q. Can you approximate the date of that meeting? Was it in the early part of January?

A. Yes, I think it was shortly after the first of the year of January, '42.

Q. And at that time you didn't discuss with Mr. Michael anything pertaining to the employment of an attorney for the trustee, or discuss the plan at all?

A. No, I did not.

Q. Did you ever discuss with him any of the plans, any of the matters pertaining to the bankruptcy?

A. Well, that's a pretty broad question, as to whether I ever discussed any.

Q. Well, did you ever discuss it with him any time before April the 24th, 1942?

A. No, I can't recall. I met Mr. Michael and Mr. Reifsnyder at various times at Catawissa, not very often, but I cannot recall any of the matters we might have discussed particularly at those meetings.

Q. But you know you didn't discuss the matter of an appointment for Mr. Michael, you know that, don't you?

A. Did I discuss the matter of appointing an attorney?

Q. Yes.

A. I did not, to my knowledge, discuss the matter of an appointment of an attorney.

Q. As a matter of fact you wanted Mr. Knight to be attorney for the successor trustee, didn't you?

MR. LEVY: One minute, please. I object to that.

THE COURT: I don't know, it may be very material.

A. I do not recall that I wanted Mr. Knight to be attorney for the trustee.

(T. 1029):

Q. That just didn't happen.

A. What is that?

Q. That wasn't true, then; that didn't happen, you never thought of that, is that right?

A. No, I did not —

Q. Now, was there anybody else that was present at this first meeting that you had with Mr. Michael?

A. Yes, I think there were men interested in the management of the company, Mr. Fred Long and Mr. Davis. I can't recall. I think he went around and met various men connected with the organization, as I recall.

MR. BROOKS: Mark this for identification.

(Exhibit G-19 marked for identification.)

MR. ROBINSON: What is that?

MR. BROOKS: For identification, marked G-19.

Q. Mr. Fenner, I show you Government Exhibit marked G-19 and ask you if you can identify it. Can you testify

it as being a copy of something that you either wrote or dictated?

A. (After examining): Yes, I did, I wrote that letter.

Q. And you mailed it to Mr. Knight, did you, sir?

A. Yes, sir.

MR. BROOKS: We offer it in evidence, G-19.

(Exhibit G-19 for identification handed to Mr. Robinson.)

MR. LEVY: If your Honor please, I don't like to make this suspicious but, at the same time, I think we ought to —

(T. 1030):

THE COURT: Make what suspicious?

MR. LEVY: The letter. At the same time I think we ought to address the Court privately in reference to it.

THE COURT: All right, step up.

MR. MARGIOTTI: Well, if your honor please, I don't care to participate in that conversation, not out of disrespect to the Court or Counsel, but I have another idea about that letter.

THE COURT: In other words, you want to stay out of this argument, if there is one?

MR. MARGIOTTI: If there is one, I will stay down here.

(At side bar.)

MR. LEVY: The difficulty with the letter, as far

as we see it, that it opens up a kind of collateral issue where we have got to put our client on the stand to say we had nothing to do with that letter, we didn't suggest it. As a matter of fact, when Mr. Compton was given the trusteeship and Mr. Knight was asked to be attorney for the trustee, he said, "No, I represent adverse interests, the Maxi Manufacturing," so how, in January, four years later, in 1942, could he be asking for an appointment as trustee? It had nothing to do with the letter. It is opening up such a collateral issue, it may contradict
(T. 1031):
Fenner but it may be prejudicial to us.

THE COURT: Mr. Levy, as to your client aren't you placing undue importance on it?

MR. LEVY: That is exactly what I said, the very fact that I called this casts a suspicion on the thing that maybe casts an influence on the jury.

THE COURT: There isn't anything in the letter that would even arouse a suspicion as to your client.

MR. LEVY: It is apt to make us take the stand to answer a proposition that isn't there.

THE COURT: It only becomes important, as I see it, because of Mr. Fenner's complete ignorance of the transaction, according to his testimony. In other words, he states, "I was a stranger here, you see." Now, the only importance of this letter is, as I see it, it is at least some evidence that he may not be the complete stranger he claims to be. But as far as your

client is concerned, or anybody else in the case, I don't think it means a thing.

MR. LEVY: I will tell you what it means as far as Mr. Fenner is concerned, it shows that he was trying to save his client for himself and not for mine.

THE COURT: I don't think it is objectionable.

MR. ROBINSON: My idea about it is, your Honor, is that at the present state of the record this witness (T. 1032):

has been questioned as to what he said to Mr. Michael about appointing an attorney for Mr. Michael.

THE COURT: Yes.

MR. ROBINSON: And there isn't anything in here to contradict that. At the present state of the record there is no contradiction of anything that he said to Mr. Michael because that letter does not say anything about his asking for —

THE COURT: There is no limit to the scope of cross-examination as to the defendant, except reasonable bounds. We are not dealing with a witness where the scope of the cross-examination might well be circumscribed to the scope of direct examination. I think it is relevant and material as far as your client is concerned because of the defense which he interposes.

MR. ROBINSON: That is all right, but —

THE COURT: Does the Government propose reading it at this stage?

MR. BROOKS: Yes, your Honor, tie it right in now while it is fresh.

THE COURT: I was going to suggest you can read it at this stage with my permission, but you actually withhold offering it in evidence until your rebuttal. In other words, I don't want the record reflecting Government exhibits going in evidence on the defense, (T. 1033):

you see.

MR. BROOKS: I see.

THE COURT: It is a mere technicality and helps to keep an orderly record that way, but you can read it now.

MR. BROOKS: Yes. Thank you.

(In open court:)

MR. MARGIOTTI: Is that letter admitted? I want to say I have no objection. I want the record to show I have no objection.

THE COURT: The only objection is actually that interposed by Mr. Robinson, and that wasn't too serious, either, and wasn't strenuously stressed. However, the Court, in the interest of maintaining an orderly record, has requested the Government to hold actual marking it, or having it received in evidence until the Government has opened its rebuttal. In other words, I don't want the record reflecting Government's evidence going in on the defense and all that sort of thing because the Circuit Court of Appeals, if it goes that far, may have difficulty following that kind of a

record. But I am going to permit Mr. Brooks to read it at this time so the jurors can follow the testimony carefully;

MR. MARGIOTTI: I just want to go on record that we have no objection.

(T. 1034):

THE COURT: Yes, that's all right.

BY MR. BROOKS:

Q. Now, Mr. Fenner, this letter is dated January 7, 1942, that you wrote and mailed to Mr. Harry S. Knight. It starts out:

"Mr. Harry S. Knight, Esq.,
"Attorney-at-Law,
"Sunbury, Pennsylvania.

"In Re: Central Forging Company
Reorganization.

"My dear Harry:—

"I take it that you have been informed that Judge Johnson has named a new Trustee to succeed Walter Compton, in matter of reorganization of Central Forging Company and from remark made by the new Trustee he said the Court had put up to him the matter of the selection of an Attorney."

Now, Mr. Fenner, a few moments ago you said you didn't talk to the new trustee, Mr. Michael, about an appointment of an attorney.

A. Yes, sir, as I recalled at that time, but my memory

being refreshed from this letter I most likely did because I wrote that letter.

Q. So you now wish to change your form of testimony and say that you did talk to Mr. Michael about an appointment of an attorney?

A. I talked to him along the lines of that letter no doubt.

Q. Now, the next paragraph says:

"I have tried to contact Judge Johnson in this locality (T. 1035):
and made a trip to Scranton and I had been assured by Mr. Glass that the Judge would be there, but he did not show up due to change of plans. Mr. Glass is aware that I have been seeking an appointment with the Judge and no appointment has been arranged for me —".

Is that correct, "and no appointment has been arranged"?

A. Yes.

Q. "— and took the liberty to make it plain to Walter Compton that it would be pleasing to Fred and myself if you could be in position to guide the final moves on the Central Forging Company reorganization proceedings as Attorney for the new Trustee."

Now, does that refresh your recollection that you wanted Mr. Knight as attorney for the new trustee?

A. I remember now the discussion of the matter of a trustee and attorney for a trustee. I had written Judge Johnson from a letter you will find in my file, I think, seeking an appointment, not so much in connection with an at-

torney but asking him to consider as trustee the name of Clare Grover, who had been attorney for Mr. Compton and knew more of the affairs of the Central Forging Company, which at that time was doing war work, and we were anxious to have someone who was familiar with its affairs.

MR. MARGIOTTI: What is that man's name, did you say?

(T. 1036):

THE WITNESS: Clare Grover, who had been attorney for Walter Compton.

MR. MARGIOTTI: Who?

THE COURT: Grover, Clare Grover.

MR. LEVY: Pardon me, Mr. Brooks, I didn't hear the witness very well. Did you say you wrote that to somebody?

MR. MARGIOTTI: To the Judge.

THE WITNESS: I wrote another letter, which is in my file, which they have from my file, seeking an appointment with the Judge.

Q. Now, did you — strike that. In your next sentence you say: "I have emphasized this several times with Mr. Compton as the best way to get this matter home to the Judge."

What did you mean by that statement, Mr. Fenner?

A. Just as it says there. I was desirous to have the affairs of this company conducted by somebody who was familiar with what had been done up to that time.

Q. You mean, that is Mr. Knight, who is an expert in bankruptcy law, you wanted him to conduct the affairs, is that what you mean?

A. I did, yes, sir.

MR. MARGIOTTI: Expert in what?

MR. BROOKS: Bankruptcy law.

Q. Now, did you ever get to see Judge Johnson about this appointment of an attorney?

A. I did not.

(T. 1037):

Q. Judge Johnson is a good friend of yours, is he not?

MR. ROBINSON: We object to that question, it is prejudicial.

MR. MARGIOTTI: Let me say this, your Honor, — may I say something?

THE COURT: I don't think that is true, Mr. Robinson, I can't exactly agree with that statement.

MR. MARGIOTTI: May I say, if your Honor please, in so far as we are concerned if that has any bearing on this case, throws any light on it, I have no objection. If it doesn't then they shouldn't even discuss it.

THE COURT: I will let him tell us whether or not he has been a friend of Judge Johnson's.

A. Yes, I knew Judge Johnson.

Q. And you discussed matters with him in chambers a number of times before this letter was written, had you not?

A. No, I had not.

Q. Did you subsequent to that ever discuss matters in chambers with him?

A. I did not.

Q. And he was just a social friend of yours, not —

THE COURT: Let's not go into it any further.

MR. MARGIOTTI: What difference does that make? any more than it does that I am bald-headed!

Q. Did you ever get an answer to this letter of January 7th, Mr. Fenner, from Mr. Knight?

A. I do not recall any.

(T. 1038):

answer to it.

Q. I show you this letter and ask you if you can refresh your recollection as to whether or not that letter was ever answered, that is, the letter of January 7th.

A. (After examining): Let me see the date of my letter, will you please?

Q. It is January 7th.

(Exhibit G-19 for identification handed to the witness.)

A. This letter you hand me is dated January 6th.

Q. That's right. I was wondering if that was a typographical error since it mentions your letter of the 7th. I mean, can you tie the two letters in as one being an answer to the other?

THE COURT: Suppose while he examines these letters and counsel get their chance at it we take our morning recess.

The jurors may retire.

The witness may step down.

(The jury retired.)

(A short recess was taken.)

MR. BROOKS: Will you mark this G-20 for identification for us?

(Exhibit G-20 marked for identification.)

(T. 1041):

GEORGE L. FENNER, SR., resumed the stand.

BY MR. BROOKS:

Q. Mr. Fenner, can you identify Government Exhibit marked G-20?

A. It is a letter addressed to me, it mentions Central Forging Company, and dated January 6, '42. It starts out, "Replying to yours of the 7th," dated January 6, '42.

Q. Can you state whether it was in reply to your letter of January the 7th, which you have just identified?

A. I would judge that it was. From several things in it, I would say it was.

Q. Yes. Now in the last paragraph of this letter —

MR. MARGIOTTI: Mr. Brooks, let me see it, please.

Q. Now, in the last paragraph of this letter, marked G-20, Mr. Knight says to you this:

"By the end of next week I expect to have my head above water concerning a paper book which I am now preparing for the U. S. Circuit Court of Appeals and it is my

intention to then contact you and endeavor to work out a plan whereby this concern may be adjudged a bankrupt and we may proceed to sale or ascertain, if we can proceed to sale without having it adjudged a bankrupt. I feel it should be promptly done."

Now, did you meet with Mr. Knight with respect to dis- (T. 1042):
cussing the sale of the Central Forging Company?

A. No, I took in the position I thought the matter should be adjudged a bankrupt. We never did anything further about that matter that I recall.

Q. Well, did you not discuss that question of adjudging the Central Forging Company a bankrupt with Mr. Knight?

A. I did not recall other than in my letters to him I had repeatedly said that I thought the matter should be run through bankruptcy after the failure of the first plan to be approved by the creditors.

Q. And Mr. Knight thought it could be handled in another way, is that right?

MR. LEVY: One minute. I object to what Mr. Knight thought.

THE COURT: Yes.

MR. LEVY: Mr. Knight expressed his thoughts in the letter of January 29th, which the Government introduced. He wanted it to go through bankruptcy exactly as that letter stated.

THE COURT: I think the form of the question is objectionable, Mr. Brooks.

MR. BROOKS: Yes, your Honor.

Q. In other words, Mr. Knight stated in this letter to you that he thought that it was possible to proceed to sale without having it adjudged a bankrupt?

A. Now as I recall (T. 1043): incidents in regard to that, that a message came from someone that Judge Johnson, because of the fact that the Central Forging Company was doing war work, he was rather patriotic about it and thought a liquidation would close off the doing of war work, that he thought a better way would be to try to work out a new plan of reorganization.

Q. Well, now, of course you know, as an attorney and as you heard Mr. Knight state on the stand, that you couldn't adjudge it a bankrupt and have reorganization proceedings at the same time and that there must be some way of working the matter out?

A. That's right.

Q. And therefore in this letter where he says that you might be able to proceed with sale without having it adjudged a bankrupt, by so doing that was this legal fiction of which Mr. Knight spoke yesterday; is that correct?

A. Whatever was done was done by him after that. Whatever my letter shows, that I had done up to that time.

Q. In other words, wasn't that what you employed Mr. Knight for, to be able to work out some legal fiction whereby you wouldn't have to sell the assets of the Central Forging Company, as a matter of law, but it would be a legal fiction and, therefore, a reorganization? That's what you employed him for, was it not?

A. No, any matter that you speak of as a legal fiction,

or anything followed after the preliminary work had been done, the work had been carried on from 1939 up (T. 1044):

until the first plan of reorganization had been voted down, and then after that some new method had to be arrived at. I took the position that I thought it had to be adjudged a bankrupt and liquidated.

Q. Therefore you don't agree with Mr. Knight that what was eventually done was a legal fiction, is that correct?

A. I took it for granted that whatever was done in connection with it was done legally and all right.

Q. Then you agree with him that it was a legal fiction, is that correct?

A. Well, I don't know what you mean by the term "legal fiction." I regarded whatever was done by Mr. Knight was done in accordance with law and the way it could be done under the bankruptcy law.

Q. And you took his word for it, as a legal expert you believed in him?

A. I did, implicitly.

Q. Now, after January the 7th, the date of this correspondence, did you go to Mr. Knight's office and discuss with him any matters pertaining to the Central Forging Company? You have your date book, you can refresh your recollection.

A. I don't have very many dates in there. I went to Mr. Knight's office with a group from the Maxi Company, Mr. Long and some others, at which we discussed certain matters in connection with the reorganization and the matters as to the amount that should be paid to him for services.

Q. Was that meeting at Sunbury?

A. That meeting was

(T. 1045):

at Sunbury.

Q. Was that the meeting of February the 19th?

A. It might have been about that time.

Q. Can you determine from looking at your date book?

A. I don't believe it is in my date book.

Q. See if February the 19th has any entry in it with respect to that meeting at Sunbury.

A. (After examining): Yes, it has.

Q. And —

A. In my notebook it say, "At Sunbury 2 P. M. to 10 P. M.—New plan Central Forging Company."

Q. Now, who was present at that meeting?

A. I think Mr. Fred Long, I believe Mr. Davis, Mr. Knight, and there might have been F. Max Long.

Q. Now, at that time you discussed the new plan of reorganization, is that correct, sir?

A. We discussed certain matters that Mr. Knight wanted to go over with us at that time.

Q. Well, what did he want to go over with you? Will you tell us what he went over?

A. I cannot recall just what was done at that meeting. I haven't had a chance to refresh my recollection as to all that took place at that meeting.

Q. Did he tell you anything about his meeting of February the 13th with Mr. Reifsnyder and Mr. Michael?

A. He might have, yes.

Q. He might have. Now, can you recall anything that he said about that meeting of the 13th?

A. I cannot recall, no, sir.

(T. 1046):

Q. That wasn't discussed then very much?

A. I do not say it was not discussed, I say I cannot just recall what took place at that meeting now.

Q. Anyway, you discussed a new plan, is that correct?

A. Yes. Matters were discussed there with reference to matters incident to this reorganization.

Q. And through that meeting you kept right up to date with what was going on?

A. At that meeting Mr. Knight took up with us certain matters incident to the matters of the reorganization and I remember distinctly the matter in connection with the services that he had performed for the company.

Q. All right. Now, you remember that. What did he say about the services he had performed for the company?

A. Well, I had known somewhat about his attendance at various meetings and he put it up to me, somewhat, as to what I thought his services up to that time might be worth.

Q. Yes. Go ahead.

A. And I made out a slip in which I put down the sum of $7,500.

Q. Now, that was to be paid to Mr. Knight?

A. That is what I thought his services might be worth.

Q. And who was going to pay him this $7,500?

A. Well, it would be a matter of working out, as charges would be made in connection with the reorganization proceedings.

Q. What do you mean by that? I don't understand that.

A. Well, if he would present a bill for representing the petitioning creditors in connection with a proceeding and try to have that amount paid to him (T. 1047):

Q. By whom?

A. Out of the estate.

Q. Oh, the Maxi Company, then, wasn't going to pay him anything for his services, is that correct?

A. Not altogether at that time.

Q. All right. Just what was the arrangement? How much was to be paid Mr. Knight by the Maxi Company?

A. He talked of what his services would be worth and we fixed a figure at $7,500.

Q. That the Maxi Company would pay?

A. Well, not entirely the Maxi Company at that time. We thought —

Q. All right. Who else was to pay him anything?

A. A certain amount would be paid out of the estate of the Central Forging Company.

Q. And how much was that?

A. There was no separation of the amounts at that time.

Q. Then you say that he was going to get his payment for the work he was doing for the Maxi Company partially from the Maxi Company and partially out of the bankrupt estate of the Central Forging Company?

A. We didn't figure the detail of that, except as to just what I felt his services that he had performed to be worth up to that time.

Q. Well, why should the bankrupt estate pay Mr.

Knight for anything he had done for the Maxi Company (T. 1048):

MR. LEVY: Because he was an attorney for the petitioning creditors and represented the bondholders.

THE COURT: Any day Mr. Levy will take the witness stand.

MR. LEVY: You are asking for a conclusion of law.

THE COURT: Let Mr. Levy's remark be stricken from the record because I am sure he wouldn't want it to appear there.

MR. LEVY: If the Court please—

THE COURT: Just a moment, Mr. Levy. State your objections to the Court. Now, if you and Mr. Brooks want to get in a private argument, there is a large room directly outside the court room, it is called the Lawyers' Room, I think—

MR. MARGIOTTI: Can we be witnesses?

THE COURT: Yes. —you can have that room be made available to you.

MR. MARGIOTTI: We will be witnesses.

THE COURT: Now, Mr. Barrows, let me hear the question.

(The reporter read the last question.)

THE COURT: Well, now, maybe Mr. Fenner can answer that as well as Mr. Levy.

A. Mr. Levy took the words out of my mouth.

THE COURT: Plagiarism, he stole the man's speech.

(T. 1049):

Don't do that, Mr. Levy. All right, go on.

Q. Do you want to repeat it?

THE COURT: You tell us now in your own words.

A. Yes, he was representing the petitioning creditors and we, who were also petitioning creditors, were willing to have as much paid out of the estate as we possibly could.

Q. What estate?

A. Out of the Central Forging Company estate in reorganization.

Q. In other words, you were shifting the burden of payment over onto the bankrupt estate, is that correct?

MR. LEVY: If your Honor please, I object to that. That is asking him for a legal conclusion, in the first place.

MR. BROOKS: He said he did.

Q. Is that what you were doing?

THE COURT: Let me hear the question.

MR. LEVY: If is a collateral issue.

(The reporter read the last question.)

THE COURT: I will let him answer it.

A. We were trying to have either the Maxi Manufacturing Company or the bankrupt estate pay as much as possible of Mr. Knight's fee.

Q. Why were you trying to do that?

A. Because we felt that he had done the work and was entitled to the fee.

Q. And it was finally agreed that he would get that (T. 1050):
$7,500 at that meeting, is that correct?

A. At that meeting we decided that that was the amount that I felt his services were worth.

Q. And at that meeting, also, was it agreed that the Maxi Company would take over the Central Forging Company and take over its assets and pay the administrative costs as of the date of January the 1st, 1942?

A. I do not recall the things that were discussed, whether that was discussed at that meeting.

Q. In other words, then, the plan wasn't discussed much, it was just the attorney's fees, Mr. Knight's, that were discussed mostly?

A. There were a number of other things discussed but I do not recall. I remember that particular matter being discussed. I cannot recall now just the various items that were discussed.

Q. Now, do you recall any other meeting at Mr. Knight's office, Mr. Fenner, after that and before April 24th?

A. No, I cannot now recall such meetings.

Q. Well, do you recall any meeting with Mr. Knight after, and before the 24th of April?

A. At this time I cannot recall. I won't say there were

not meetings but I do not recall them at this time.

Q. Well, did you talk to Mr. Knight over the telephone, or write him any letters with respect to the Central Forging Company?

A. I might have written him letters because be-

(T. 1051):

tween Mr. Knight and myself there was an exchange of correspondence, he kept me informed of certain matters by letter because he was at Sunbury and I was at Wilkes-Barre.

Q. Did you state yesterday on the stand that no one kept you informed of the meetings previous to April 24th?

MR. ROBINSON: That is objected to unless the meetings referred to are identified.

Q. Did you so testify?

A. I could not recall having testified that I was not informed of any meetings.

Q. So, then, you say you were kept informed of the meetings that transpired between February the 19th, the last time you were at Sunbury, and April the 24th?

A. No, I say that certain correspondence passed between myself and Mr. Knight, and Mr. Knight kept me informed of some matters. I do not now just recall.

Q. Didn't you state this morning on direct examination that you were not informed of the deductions to be made in any plan of reorganization, what was to be added and what was to be subtracted, and so forth?

A. Yes, sir.

Q. You were not informed of those things?

A. Not that I recall; no, sir.

Q. And that's true up until the 24th of April?

A. No, I saw an occasional matter. This letter of April 8th, whatever it contained, I looked at it, as I said, in a casual way and laid it down.

(T. 1052):

Q. Well, outside of that you had no information?

A. Not as I recall, no, sir.

Q. But you did correspond some with Mr. Knight during that period?

A. Yes, there was some correspondence passed between Mr. Knight and myself.

Q. And during that period did you also correspond some with Mr. Davis?

A. I might have.

MR. BROOKS: Mark this G-21, please.

(Exhibit G-21 marked for identification.)

Q. Do you recall the nature of your correspondence with Mr. Davis?

A. I do not.

Q. Well, it was pertaining to the Central Forging Company, was it not?

A. It might have been pertaining to the Maxl Company. I would not—

Q. You didn't discuss Central Forging Company very much with Mr. Davis, then, is that right?

A. Well, I wouldn't say I didn't discuss it.

MR. LEVY: Can we see that exhibit, please, Mr. Brooks?

MR. BROOKS: Can I get him to identify it first?

MR. LEVY: All right.

Q. Will you look at Exhibit G-21 and tell me whether you either dictated or wrote that letter?

A. (After examining): Yes, I wrote that letter.

Q. And you mailed that to Mr. Davis, is that right? (T. 1053):

A. Yes, sir.

MR. MARGIOTTI: What is the date of it?

MR. BROOKS: The date of it is March 11, 1942.

(Exhibit G-21 for identification handed to Mr. Levy.)

Q. I haven't looked at the letter, Mr. Fenner. Can you now recall what was discussed in your letter?

A. Yes, there are details of figures that must have been gone over at some conference, giving details of figures that were worked out finally in some revised plan.

Q. Now, you said that you were not kept advised of what went on at these previous conferences. Does that refresh your recollection as to whether or not you were advised of the progress of the reorganization?

A. Except that I knew somewhat of these figures at the time.

Q. Therefore when you said a few moments ago that you were not aware or advised of the progress, you were mistaken, is that correct?

A. I must have gotten these figures at Mr. Knight's office and detailed them.

Q. Can you state when you got them at Mr. Knight's office? Was that on February 19th or intervening?

A. Can I see the letter again? I can probably tell.

Q. It is dated March the 11th.

A. I would like to see the letter if I may.

Q. In other words, Mr. Fenner, you weren't left out in (T. 1054):
the cold, you were informed of the progress of this all along, were you not?

A. The matter of that letter was in order that we might be advised as to amounts to raise as to finance.

Q. And the amounts of deductions to be made and who was to get how much and certain amounts like that?

A. It is quite in detail, yes.

THE COURT: Is this marked, Mr. Brooks?

MR. BROOKS: Yes, your Honor, G-21.

THE COURT: For identification.

(Exhibit G-21 for identification handed to the witness.)

Q. Now, the figures in this letter, Mr. Fenner, represent practically the same figures that were eventually agreed upon for the purchase of Central Forging Co[illegible]?

MR. LEVY: I object to it on the ground that the letter is the best evidence.

THE COURT: Well, it is—

MR. LEVY (Continuing): And they are not the same figures, they disprove the Government's case. The amount is $30754 and not $23000.

MR. PRATT: The amount exactly corresponds with the Government's contention when you take into

consideration the deductions that everybody knows about in this case.

THE COURT: Let me hear the question, Mr. Barrows.

(T. 1055):

Counsel have had their fling at this.

(The reporter read the last question.)

MR. PRATT: If the Court please, I was addressing my remarks to the Court and not to counsel.

THE COURT: You and I are getting along very well, Mr. Pratt, and everybody else. I will let him answer it.

A. The items of certain payments there are very much the same.

Q. Of course, at this time, March 11th, you hadn't finally determined the exact dollars and cents, had you?

A. Well, those were figures gone over in Mr. Knight's office at which we were trying to determine how much money would be required to be raised by the Maxi Company.

Q. Yes. And in the first paragraph you stated to Mr. Davis:

"Dear Homer:—

"Following our discussion last evening, to clear our minds as to amount required for final payment in Central Forging Reorganization, it looks like $30,754.33."

A. That's right. We were trying to determine what amount of money had to be raised.

Q. But that wasn't final, was it, thirty thousand-odd dollars? That wasn't the final figure, was it?

A. No, it was not.

Q. And, as a matter of fact, there were certain deductions

(T. 1056):

made from it later?

A. Well, I know the amount was larger later than the Maxi Company eventually paid out in toto.

Q. That is including the $17,000, of course?

A. Yes.

Q. But excluding it it wasn't larger than $30,000, was it?

A. Not excluding it, no, sir.

Q. And you deduct certain amounts from the thirty thousand-odd dollars so to where it eventually came to the $26,404.33?

A. I don't follow that. Of course I knew of the figures at that particular time.

Q. Well, you make certain deductions here and then you finally get down to where you say, "Balance which we pay $28,754.33," and then underneath that is a line, "To Mr. Knight, add $2,000," then you total it and it is $30,754.33. Now, that's what it looked like at that time?

A. On March 11th, yes, sir.

Q. And then later you deducted a certain amount for supplies, about $2,000, I think.

MR. ROBINSON: We object to that. That is assuming a fact not in evidence.

A. I don't know.

THE COURT: He said he didn't know.

Q. And then you go farther in your letter and say, "Figures given me by Mr. Knight as estimated costs, if Court approves, as follows:—" and then you set out a long list of costs among which is Mr. Knight's fee of $5,500. And also a

(T. 1057):

possible payment, you state, to Mr. Michael and Mr. Reifsnyder, $5,000 each. That was subsequently changed, wasn't it, the $5,000 to the trustee and his attorney?

A. It was, as I recall from the testimony, yes, sir.

Q. Yes. It was cut down to $3,950. And so those reductions subsequently brought it down to $26,404.33?

A. It brought it down to a certain figure, I do not recall.

Q. Then you go further and you state here that, "The expense items above do not total as I took them down, the $28,754.33,—" You mean as you took them down in Mr. Knight's office, you didn't get them all so you could make them total correctly?

A. That might have been, yes, sir.

Q. Yes. (Continuing): "—and if we can salvage some part of this total to pay Harry Knight's $2,000.00 we should try to do so."

Now what do you mean by salvaging to pay Mr. Knight's $2,000?

A. Well, if any of the figures could be changed from the amounts probably as stated in the preliminary estimate.

Q. And so it was discussed all along and you were kept fully advised as to what was going on?

A. I had to get certain figures to enable me to work out the financing and that seemed to be part of the figures I obtained and transmitted to Mr. Davis for that purpose.

Q. And you were helping them try to work out the financing

(T. 1058):

of the enterprise?

A. Yes, sir.

Q. Now, I believe you stated that the next time you learned of any conference held by anyone connected with the reorganization was when Mr. Davis showed you the letter of April the 9th, is that correct?

A. Yes, sir.

Q. Now, you stated that you were in Catawissa and saw Mr. Davis and he showed you this letter that is now in evidence and he took you into some room that was not his regular office, you went off into some private spot where you could talk about it?

A. No, this is a room where we often met, it was a room just above the office.

Q. Well, now, what was that room, a directors' room or something?

A. Well, the directors now meet there, yes.

Q. Well, who had been meeting there then? You said, "We had been meeting," you mean you and Mr. Davis?

A. No, when we went down to the plant we generally went in that room and visited and talked.

Q. Well, what was in that room?

A. A certain table and some chairs.

Q. Just a conference-room, then, is that right?

A. It might be called a conference room, yes.

Q. Why didn't you talk to Mr. Davis in his office about this matter?

A. Because it was in the evening and it was the room

in which we generally went when we met there, in the evening, it was this particular room.

(T. 1059):

Q. You didn't usually go to Mr. Davis's office to talk to him about any matter?

A. Davis had no particular office there other than just a desk, probably, at some particular point.

Q. Well, how did you happen to be in Catawissa that day?

A. I had a message from Mr. Davis to come to Catawissa.

Q. And how did you receive that message?

A. It might have been by telephone because I made a note in my book that I was to call.

Q. You talked to him over the telephone, then?

A. I think the call to come to Catawissa came to me over the telephone.

Q. So you went to Catawissa and when you saw Mr. Davis what did he say to you then?

A. He showed me that letter.

Q. But you went to the office, first, before he showed it to you, the room; you went to the room before he showed it to you, didn't you?

A. Yes.

Q. Did you know what he wanted to talk to you about before he showed you that letter?

A. I do not recall that I did, no, sir.

Q. You knew nothing about the plan which had for its purpose making you the bag-man for this scheme?

A. I did not.

MR. LEVY: One minute, please. We object to

that.

(T. 1060):

MR. ROBINSON: As a characterization.

THE COURT: Yes, the use of the term, I think, is not too appropriate.

Q. Now, you say you didn't—

THE COURT: We have used intermediary up until now; it might be a better term.

MR. BROOKS: Yes, sir.

Q. So when Mr. Davis showed you the letter what did he say? Did he just say, "Here is a letter for you," or "Here is a letter for me," or just what?

A. At this time I do not recall what conversation took place in regard to it at all. I can't recall just what was said.

Q. But you read the letter?

A. Yes, I read it casually.

Q. Just casually?

A. And laid it down.

Q. Just casually?

A. Yes; I just read it and my thoughts were engaged principally by the starting of the letter.

Q. By the starting of the letter? What do you mean? You can look at it, sir. That is a photostat of it.

A. The part that I had in mind that engaged my attention was the part that, "I suggested to Don that we would endeavor to protect him and that personally I would like to see it done through Mr. Fenner or young George Fenner."

Q. When you read that what did you do?

A. I told him that I did not want to have George Fenner used in connection

(T. 1061):

with that payment.

Q. As a matter of fact, Mr. Fenner, when you read that you were so surprised and so shocked that you were practically speechless, were you not?

A. Not necessarily, no.

Q. Well, when you see some man writing to a third party and selecting you as the intermediary for a transaction of this nature, wouldn't you be rather shocked or stunned?

A. I never liked the proposition.

Q. Especially when a man hasn't talked to you about it?

MR. ROBINSON: Let the witness answer.

THE COURT: Let him finish.

Q. I beg your pardon, go ahead.

A. I never liked the proposition and did not care to be used as an intermediary, myself.

Q. Wasn't it rather unusual for a person who had never consulted you about it to put it in a letter to a third party?

A. That might have been, yes.

Q. Well, wasn't it?

A. Well, I would say it was.

Q. It had never been done before with respect to you, had it?

A. No, sir.

Q. You never had anybody appoint you as intermediary in a matter like this before, had you?

A. I had not.

Q. Therefore you were so stunned about it you couldn't say much to Mr. Davis, could you?

A. Well, I wouldn't say that particularly, but my thoughts were entirely engaged

(T. 1062):

principally upon these features of that letter.

Q. Especially the feature that somebody was going to be protected in it, as you mentioned a moment ago?

A. Well, that matter of protection was a term that I could not grasp at that time.

Q. And if there was going to be any protection needed you didn't want your son in it, did you?

A. I didn't want either my son or myself in it.

Q. And at that time you said that either you or your son wouldn't participate in a thing like that?

A. I didn't say with regard to myself particularly at that time but I did say that I would not have my son do it.

Q. And then after that what did Mr. Davis say to you?

A. Well, the thing that runs through my mind that I inquired about this letter and he said he understood it was a matter that Mr. Reifsnyder and Mr. Michael, being dissatisfied with the amount they were getting.

Q. He said that to you then?

A. Yes, sir.

Q. Did he also say to you at that time that he had discussed it with Mr. Knight and Mr. Knight told him it would be perfectly legal?

A. I do not recall.

Q. Well, if he had said that it would have allayed your fears, wouldn't it?

A. Yes. He might have told me that he had some consultation with Mr. Knight but as to what that was, I do not recall what was said.

(T. 1063):

Q. Well, he told you that he understood it was a matter of dissatisfaction with fees?

A. I rather interpreted from the letter that he had some consultation with Mr. Knight.

Q. Oh, he didn't tell you that, you interpreted that from the letter?

A. I interpreted it from the letter, yes, sir.

Q. Yes.

* * * * * * * * *

(T. 1072):

Cross Examination (continued)

BY MR. BROOKS:

Q. Now, Mr. Fenner, just before the noon recess we were talking about the letter of April 9th, 1942, and about your discussing it with Mr. Davis. Approximately how long did your discussion with Mr. Davis concerning this letter last?

(T. 1073):

A. I couldn't tell you that at this time, just how long that discusion lasted.

Q. You were sitting around this table up in this room that you described this morning and having this discussion?

A. Well, that's where he showed me this letter, in that room.

Q. Was there anyone else present at that time?

A. There was no one, as I recall, no.

Q. Well, did you both leave together, or did one of you leave before the other?

A. I did not now recall that.

Q. You don't know whether you were there 30 minutes or an hour?

A. No, I do not recall just how long.

Q. Is that the room that is used for the Maxi Company for the entertainment of its customers, or meeting with customers or prospective customers?

A. That is the room, yes, sir. It was used for that purpose at that time.

Q. Was it used for any other purpose?

A. At that time?

Q. Yes.

A. Well, there were times when we discussed matters we went into that particular room.

Q. Now, don't you recall, Mr. Fenner, that you and Mr. Davis sat around there something like an hour and discussed this whole matter?

A. I do not, sir.

Q. It didn't happen that way?

A. I say I don't recall. I am quite sure we were not there that length of time. Over a matter of this type.

(T. 1074):

Q. That's the room, as you say, that is used to entertain customers, etc., and sometimes drinks served up there for the customers?

A. Not in that room, no sir.

Q. Never have been?

A. I won't say that. Not to my knowledge. They might have a place where they entertain customers in other parts of the building.

Q. But not in that room?

A. Not in that room.

Q. You would not sit around and sip drinks or anything like that?

A. No, sir.

THE COURT: It wasn't as pleasent as all that.

Q. Now, you notice in this letter to Mr. Davis, Mr. Knight told him that, "it was then arranged that he," speaking of Mr. Reifsnyder, "would write me a letter stating that they could not agree to the reduction of 15%, which would amount to about $3500, but they would agree to a flat deduction of $3000 and make the price $22,982 plus *some odd cents and that* we would endeavor to make some arrangements through Mr. Fenner to work out a plan satisfactory."

Now, did you not discuss that with Mr. Davis, the plan that would be satisfactory?

A. I did not, and did not notice that as part of the letter at the time.

Q. And you took the letter with you when you left the room, didn't you, Mr. Fenner?

A. I did not.

Q. You left it with Mr. Davis?

A. I left it on the table.

(T. 1075):

I do not know just what became of the letter.

Q. Oh, I see. Did you ever learn just what the arrange-

ments through you were to be that would make, or that would work out a plan satisfactory?

A. I never did.

Q. Now, after you saw this letter and read it did you get in touch with Mr. Knight before April 24th?

A. I cannot recall having any communication with Mr. Knight around that time because I understood he would be away and I did not attempt to contact him at all.

Q. In other words, you didn't have much curiosity about the matter and didn't attempt to get in touch with anybody to discuss this plan?

A. I knew that Mr. Reifsnyder and Mr. Knight were carrying on most of the negotiations and I did not, I was bothered mostly about this question of whether I should act as an intermediary.

Q. Yes. And so you had two weeks to think about that from the day that you first saw this letter and April 24th when you did go to Sunbury.

A. Between the 8th and the 24th, yes, sir.

Q. Now, during that time you didn't convey your decision to anybody, did you, that you recall?

A. Yes, as I testified, it was between that time, I can't give you the exact date, when, as you put it, I conveyed my decision to Mr. Reifsnyder.

(T. 1076):

Q. Where was that done and how was it done?

A. By telephone conversation at some date between April 8th and April 24th, 1942.

Q. You called him or did he call you?

A. He called me.

Q. At your home in Wilkes-Barre?

A. No, at my office in Wilkes-Barre.

Q. Yes. Just tell us what Mr. Reifsnyder said to you.

A. Mr. Reifsnyder asked me if I had been contacted about a check, and I told him that I had been. Then he asked me what about it and I made some statement to him that I did not want to be and intermediary in the transaction. Then he, in his conversation, advanced certain arguments implying what I might have to do with the payment of the check.

Q. What was that argument, briefly?

A. Well, the argument was leaving me the inference that there would be other matters to pay out of a fund that could be used for that purpose. In other words, that there was an amount of $500, which I had known of before to be paid to Hervey Smith and that certain of the men who had been instrumental in other work of the reorganization, he mentioned two names in particular, Clair Grover and John Crolly, were dissatisfied with the amounts. Then he used the argument with me of his wanting to close up his business matters, and particularly the matters incident to this reorganization and wanted to get together as much money as he could as he was

(T. 1077):

contemplating going into the Navy and wanted to have as much money as he could for his wife and family.

Q. But that argument of his about going into the Navy and wanting to leave something for the protection of his wife and children didn't touch you at that time, did it?

A. Yes, it did, I consented then to, after some further conversation, I consented then that I would allow myself

to be used as the one who would handle this matter of the check.

Q. Now, prior to that time, you knew that Mr. Reifsnyder, according to Mr. Knight's testimony, had asked for $7500 did you not?

A. I do not recall having knowledge of that at that time, I can't fix in my mind that any time where I learned of that amount being asked for.

Q. Do you say that that was not discussed at that meeting in Sunbury, in Mr. Knight's office on February the 13th, I believe you said was the date of it, when you were discussing Mr. Knight's fee? Wasn't it discussed also that Mr. Reifsnyder wanted $7500?

A. It might have been, but I do not now recall whether it was or not.

Q. You did hear Mr. Knight testify on the stand, did you not, that Mr. Reifsnyder and Mr. Michael each wanted $7500, like the amount he was asking for?

A. Yes, sir, I heard him so testify.

Q. And you heard him further testify, did you not. (T.1078):

that after their discussion of that $7500 it was later discussed that they might get $6,000, and then it was later mentioned that $5,000 might be paid them?

A. That's right.

Q. And it was finally gotten down to where they applied to the Court for $4,000, and the Court finally gave them $3950. Now, can you say that you never had any discussion with Mr. Knight relative to those many proposals concerning the fees that Reifsnyder and Michael were to get?

A. I do not recall such proposals and I do not remember an occasion where I could have had the type of discussions which you ask me about.

Q. And do you know why Mr. Knight, after having these discussions with Reifsnyder and Michael concerning their fees and pushing them down from $7500 to $4,000 suddenly had a change of heart and agreed to give them $3,000 that they were asking to be paid through you?

A. What is that question again?

MR. LEVY: One minute, please, I object to the question as assuming something not in evidence. Mr. Knight had no change of heart and didn't push them down from $7500 to $4,000. There isn't anything in the evidence along those lines.

MR. BROOKS: There is plenty of evidence about the discussions of fees.

THE COURT: The only thing objectionable about the

(T. 1079):

question is the form. I think you could reframe the question so that it would be proper and within the scope of the evidence.

MR. BROOKS: Yes.

THE COURT: Without characterizing it as to the "change of heart."

Q. Do you know, Mr. Fenner, why Mr. Knight agreed to give this $3,000 to Michael and Reifsnyder after having discussed with them numerous fees that you have enumerated?

A. No, I do not.

Q. You don't know whether it was because they were getting or asking as much as he was asking for?

A. No, I do not. On that score I do not.

Q. Do you say that it was not because of the fact that you were going to try to salvage $2,000 out of this transaction and pay it to Mr. Knight?

A. I don't believe the two matters have any relation. Talking about whether I knew why Mr. Knight, as I take your question, why Mr. Knight was arranging or willing to give $3,000 additional to Mr. Reifsnyder and Mr. Michael, I didn't know particularly what was in Mr. Knight's mind regarding it at that time.

Q. It couldn't have been because he was going to get this $2,000 that you were going to salvage in this letter that you identified?

MR. ROBINSON: I object to that as repetitious, (T. 1080):

> he has asked the man the question twice now; he says he doesn't know.

Q. You state you don't know?

A. What was in Mr. Knight's mind, I do not.

Q. I see. You do say, though, that this $2,000 payment to Mr. Knight was being paid because of his participation in this reorganization, do you not?

A. No, the $2,000 was for services performed by Mr. Knight for the Maxi Company.

Q. In connection with the reorganization, was it not?

A. Not entirely, oh, no, sir.

Q. What part of it was with respect to the reorgani-

zation and what part of it was with respect to other services?

A. Well, in the final stages of paying him, that $5,500 was to be payment for services in the reorganization, the $2,000 was for services performed by Mr. Knight over a period covering the time from 1938 up until '42, various matters that he had taken care of for the company.

Q. It had nothing, then, to do with the reorganization, is that correct?

A. Not the $2,000.

Q. It didn't?

A. No, sir.

Q. It did not?

A. No.

Q. I see. Now in this letter of April the 9th there is some mention made about the lawyer who was to be designated as the intermediary would render a bill to the Maxi Company for this $3,000. Did you ever render any such bill as that to the

(T. 1081):

Maxi Company?

A. I did not.

Q. Did you discuss rendering such a bill with anyone?

A. I do not now recall whether I discussed it with anybody or not.

Q. You could have, is that right?

A. Yes. I remember distinctly I did not render any bill.

Q. Why didn't you?

A. What is that?

Q. That was the plan, why didn't you do that?

A. I didn't regard it as the plan. As I interpret the letter now, having paid more attention since the last hearing, that bill was to be rendered if somebody else was to get the check of $3,000.

Q. So you didn't think it applied to you?

A. What is that?

Q. You don't think it applied to you, is that right?

A. I did not render any bill.

Q. So it is your testimony that you agreed to the $3,000 payment and agreed to be the intermediary purely because Mr. Reifsnyder called you on the telephone and talked to you about having applied for commission and was going in the Army or Navy and that you did it for that reason?

A. No, that was one of the reasons I did it for Mr. Reifsnyder. I might have had other reasons that entered into my mind at that particular time, due to the fact that I knew at that time that the $17,000 had been provided for the payment of matters that

(T. 1082):

were paid. I knew at that time, having attended a meeting in John Crolly's office on August 2nd, that the creditors had all voted in favor of the plan.

MR. LEVY: You mean April 2nd, do you not?

THE WITNESS: April 2nd, yes. And I thought that in view of Mr. Knight's suggestion of the letter of April 9th, in my talk with Mr. Reifsnyder, that it would be all right to go along in that way. I was not

entirely satisfied with acting as intermediary and along the line I made certain objections.

Q. You said you first made your objection to Mr. Reifsnyder over the telephone and after he argued with you, why, then you agreed that you would go along?

A. Yes, sir.

Q. Now, did you convey your decision to anybody else other than Mr. Reifsnyder before April 24th?

A. I do not recall having done it. I might have but I do not recall whether I did or not at this time.

Q. And do you know whether or not you talked to Homer Davis about it?

A. I cannot recall whether I did or not, whether I talked with Homer or Mr. Knight or anybody, I cannot now bring my mind—I can't refresh my recollection with anybody that I did talk to at that time.

Q. Did Mr. Davis tell you on April 10th, when he showed you this letter, that he had been in Sunbury on April 8th and had been to Mr. Knight's office?

(T. 1083):

MR. COUGHLIN: We object to that, that is not the testimony.

THE COURT: He can ask it anyway; he is asking whether it is the fact.

A. I do not recall now. I rather inferred from a casual reading of this letter that Mr.—from my reading at that time, that Mr. Knight had been in some type of contact with Mr. Davis.

Q. So you don't know where that was, is that your testimony?

A. That is my testimony as I recall now.

Q. Now, after talking with Mr. Reifsnyder and agreeing to the plan, when did you next see Mr. Reifsnyder?

A. On the morning of April 24th when he arrived in the automobile at my home.

Q. And you rode to Catawissa with him, is that correct?

A. Yes, sir, with he and Mr. Michael.

Q. And you got out of the car there and went from there to Sunbury with Mr. Long?

A. Mr. Long and Mr. Davis.

Q. Now, you stated on direct examination that you talked to Mr. Reifsnyder on a trip from Wilkes-Barre to Catawissa about the plan and about the payment of the $3,000 and something about the income tax, is that right?

A. Yes, we had some conversation, I cannot recall all the matters that were talked over on that ride.

Q. And it was agreed on that ride that you would be given

(T. 1084):

an amount sufficient to, as you said, defray your income tax?

A. Yes, there was a suggestion made by Mr. Reifsnyder, if I was to be the one who handled that check that I would be entitled to a certain amount for income tax purposes.

Q. So after you arrived at Sunbury, in Mr. Knight's office, then you had this discussion about the payment of the money, the writing of the checks and all of those things that you have already described?

A. Yes. There was a meeting that lasted for some

time, a good part of that day, April 24th, on various matters.

Q. Yes. You have described that already. Now, I believe you also said, in describing that meeting, that at that time you interposed some additional objection to being used as an intermediary?

A. No, I don't think I said anything other than I might have spoken to Mr. Davis and Mr. Long, as we were around the room, saying to them privately that I didn't like the idea of my being used as an intermediary.

Q. That's right.

A. Or in the matter of this check.

Q. Why was it necessary, then, for you to continue objecting when you had already given your decision to Mr. Reifsnyder?

A. I continued to object even after I had because I didn't like the idea.

Q. But you knew it was wrong, didn't you, Mr. Fenner?

A. Well, I didn't— I thought it might have been handled in some other way.

(T. 1085):

Q. At that time—

THE COURT: Just a moment. What do you mean "handled in some other way"? Why didn't you like it? You keep telling us you didn't like it, why didn't you like it? Did you perceive anything wrong in it?

THE WITNESS: Well, it might have been paid— yes, I didn't like the idea that I was to be given $3,000 which I was to turn over to somebody else, that the

books would show my having received certain moneys which I had not received.

THE COURT: Go on, Mr. Brooks.

Q. At that meeting you said that Mr. Reifsnyder finally handed you $500?

A. Yes, sir.

Q. Where did he have that $500?

A. I don't know. He produced it from somewhere.

Q. Did he take it out of his pocket or out of a brief case or just where did he have it?

A. As I recall, he took it out of his pocket, as well as I can recall now, at this date.

Q. And he walked up to you and handed it to you, is that right?

A. We had probably discussed, carrying on a discussion among ourselves, definitely fixing the amount, among Mr. Reifsnyder and myself, which had not been entirely concluded on our ride.

Q. And what did you say when Mr. Reifsnyder gave you the

(T. 1086):

$500?

A. I don't recall particularly saying anything. I do not recall what was said at the time, if anything.

Q. As a matter of fact, you are not clear, Mr. Fenner, are you, as to whether the $500 was paid to you at the office of Mr. Knight's or whether it was paid to you at the Catawissa National Bank?

A. I have testified I think repeatedly, it was paid to me at Mr. Knight's office. That is my best recollection on it.

Q. Well, can you tell this jury, then, why it was that during your ride with Mr. Reifsnyder from Wilkes-Barre to Catawissa, when you discussed this payment and the income tax, why it was that Mr. Reifsnyder didn't give you the $500 then?

A. Well, I could say as I have said, that the amount had not been definitely fixed during our ride and was not definitely fixed until we further discussed it aside in Mr. Knight's office.

Q. Oh, then, all of you in Mr. Knight's office entered into the discussion of how much you were to get and retain for your income tax return?

MR. LEVY: I object to that—

A. No, sir.

MR. LEVY (Continuing): —as assuming something the witness did not say.

THE COURT: He said "No, sir," he did not.

MR. LEVY: He distinctly said it was discussed at (T. 1087):

the side, between he and Reifsnyder.

THE COURT: It is cross-examination, though, Mr. Levy. The Government has got to be allowed some latitude to test the credibility of the witness. His answer, however, was that it was not so discussed.

Q. Now, at the meeting in Mr. Knight's office, where did Mr. Knight sit with respect to the desk around which the others were sitting?

A. At that time Mr. Knight sat at the head of the

desk, pointing to counsel table (indicating), as though he were at the head.

Q. Now, where was Mr. Davis sitting?

A. I couldn't tell you in which position.

Q. All right. Who was writing out the checks?

A. Mr. Davis wrote out the checks, as I recall.

Q. And who was telling him how much to put into each check, if anyone was?

A. I believe Mr. Knight.

Q. Did he read from any paper or anything while he was directing the amounts to go into each check?

A. As I recall, he had some type of memorandum from which he was reading, or some type of paper.

Q. I show you Government's Exhibit G-4 and ask you if that is the paper to which you refer as being used by Mr. Knight?

A. I couldn't tell whether it was the paper or not. I believe it was a yellow pad that was used, a manilla pad. I wouldn't know.

(T. 1088):

Q. Anyway, he was directing what was to be done and was reading from a yellow pad?

A. Reading from something that had been written on a pad, yes, sir.

Q. Did Mr. Knight advise you in any respect that day as to any matter at all?

A. I do not recall any particular advice given me by Mr. Knight at that particular time. There were a number of things done in connection with a conference that lasted the time that this conference lasted.

Q. But he was doing most of the advising that day?

A. Well, the matters were carried on principally between Mr. Knight and Mr. Reifsnyder.

Q. Now, you stated that you went from there on down to Catawissa, to the Catawissa National Bank?

A. Yes, sir.

Q. Who went down there with you?

A. Well, I went in the automobile of Mr. Max Long, with Homer Davis, and Mr. Long left Mr. Davis and myself out at the bank and he drove his car on, and we were joined, or Mr. Michael and Mr. Reifsnyder had gotten there either before us or after, anyway we were all at the bank together.

Q. Did you take your $500 down to the bank with you, to Catawissa?

A. Yes, I had my $500 at that time.

Q. And at that time the bank, I believe you stated, that they brought out this money and laid it on the table and certain ones counted the money. I believe you said Mr. Michael and Mr. Reifsnyder, is that right?

A. That is what I said,

(T. 1089):

yes, sir.

Q. Yes. You also said Mr Reifsnyder put $500 in his pocket?

A. Yes, sir.

Q. And you don't know what he did with the $2,000 or $3,000 that was left?

A. I don't recall just which one of them took it or where they placed it.

Q. I mean, there would be $2500 left after he took out the $500. Did you see a brief case carried by either Mr. Reifsnyder or Mr. Michael?

A. I do not recall it now but I know Mr. Reifsnyder had certain papers that he had brought to Mr. Knight's office and he might have had a brief case.

Q. Anyway you didn't see anybody put any more than $500 in their pocket, did you, at that point?

A. No, I did not.

Q. Now, from that point you went to Bloomsburg with Mr. Reifsnyder and Mr. Michael?

A. Yes, after our leaving the bank we went to Bloomsburg.

Q. And there you stopped at the country club, the golf course, rather, and saw Mr. Hervey Smith?

A. Yes, sir.

Q. And $500 was paid over to Hervey Smith?

A. I didn't see that payment.

Q. Well, wasn't that the payment that you said just a few moments ago that you knew about; was going to have to be paid?

A. Yes, I said that; I knew that was to be paid but I didn't see the money turned over.

Q. But you knew they were going there for that purpose,

(T. 1090):

to give it to Mr. Hervey Smith?

A. I can say that that I understand to be the purpose of their going to the golf course, to give $500 to Hervey Smith.

Q. So you didn't see the money pass?

A. I did not.

Q. You still had your $500 then?

A. I did.

G. L. Fenner—Cross

Q. Did you go from there to your home?

A. I did, in the automobile of Mr. Michael.

Q. So at Sunbury you were given $500; at Catawissa Reifsnyder got $500 and put it in his pocket; at Sunbury Smith got $500—

THE COURT: Bloomsburg.

Q. (Continuing): —Bloomsburg, and you got home with your $500 all right, did you?

A. Yes.

Q. I see. Now, after that did you again see Mr. Reifsnyder?

A. I do not recall having seen Mr. Reifsnyder until I saw him here in the corridor, as I say, at the time we were all summoned up there before the Grand Jury. I might have seen him on some other occasion but I do not recall it.

Q. You didn't see Mr. Knight again, either did you?

A. Mr. Knight?

Q. Yes.

A. Oh, yes, I saw Mr. Knight at various times, probably at Catawissa.

Q. Did you see him for the purpose of discussing matters concerning Central Forging Company?

A. No, I think it was more concerning matters of the Maxi Manufacturing Company.

(T. 1091):

Q. Although after the concluding of that plan Mr. Knight and you carried out certain matters in regard to the Central Forging Company?

A. Yes, there were certain matters to clear up about

having a mortgage satisfied, there were matters to clear up about the matter of the Central Forging Company matter and there might have been a number of different matters that I was interested in in connection with the Maxi Manufacturing Company, having the matters straightened out.

Q. Well, during that time did you discuss with Mr. Knight anything further with respect to this $3,000 that you had been the intermediary for?

A. I did not. I might have asked him on some occasion, there is a certain expression running through my mind.

Q. Now, is this guesswork or do you know whether it is the truth?

A. No, it is a matter of a remark made by him to me as to the time or place. You asked me about this matter. I asked him on some occasion who else was to be in on this matter of, I think in this letter there is something about some other persons, and the reply I got was he understood they were probably office associates of Don Reifsnyder mentioned in connection with other persons who might be intermediaries in connection with this payment. Now, as to just when that was, it is a matter I have been trying to work out, as I recall that expression.

(T. 1092):

Q. That wouldn't likely have happened after the money was paid, would it, Mr. Fenner?

A. Yes, it might have happened some time after.

Q. I see. Well, did you ever talk to Mr. Davis any further about this payment of $3,000, after the money had been received by you and you had endorsed the check and it had been paid over, did you ever have any conversation with Mr. Davis after that about that money?

A. I do not recall discussing it with Mr. Davis.

Q. In other words, the whole matter was dropped, nobody discussed it after that?

A. I guess everybody thought the things done in connection with it were all right.

Q. Did everybody think the plan had been carried out according to its terms, as far as you know?

A. Yes.

Q. And you carried out your end of it?

MR. ROBINSON: I object.

A. Yes, I did.

MR. ROBINSON: Wait now. He is confusing the witness. What plan the plan of reorganization or some other plan?

Q. No, the $3,000 plan,

MR. ROBINSON: The $3,000 plan?

MR. BROOKS: Yes.

Q. You carried out your end of that plan?

A. Yes, if you are speaking of the $3,000.

JT. 1093

Q. Yes. Did you report that $3,000 in your income tax report?

A. All I reported of that was $500 that I received.

Q. Why didn't you carry out the terms of the plan and report $3,000, Mr. Fenner?

A. Because I felt I should return just the amount of money that I received and not that that I did not receive.

G. L. Fenner—Cross

Q. Was that done on anybody's advice?

A. No.

Q. No legal advice on that?

A. That was my own interpretation of the form in which I should make my return.

Q. You didn't ask Mr. Knight about that?

A. I did not.

Q. Now, if I were to show you a copy of your income tax return would you point that $500 out in it?

A. I don't know whether I could or not. I probably could in the figures that I made up where I totalled them out that I made a return for.

Q. You are sure, though, that it is reported, the $500?

A. I believe so, yes, sir.

Q. And do you recall having a discussion with Mr. Weber with respect to that income tax return?

A. I do.

Q. Do you recall turning over to Mr. Weber of the FBI your fee book and copies of your income tax return?

A. I remember very well.

Q. And do you recall that after his examination of those books you talked to him again and he told you that the $500 was not included?

A. Never to my knowledge did he tell me any such thing.

(T. 1094):

Q. He didn't do that?

A. Not to my knowledge, no, sir. At certain visits he had taken my papers, or my records, which I gave him, my account books, my check books and checks and I afterwards, at some occasion when I was here, he took me to

his office and we went over certain data in connection with that return and, as I take it, he was seeking to satisfy himself as to certain matters incident to it. I was always under the impression that he was satisfied that that $500 was in that return.

Q. You got no other impression from talking to him?

A. No, sir, not from that conference. That I felt helped me to satisfy in my own mind that what I had included was all the moneys shown by my records.

Q. Did you get a different impression from any other conference?

A. No, sir. I only recall the one conference with Mr. Weber, when he wanted to satisfy himself as to certain items appearing on my records from which I had taken my income tax data.

Q. So, Mr. Fenner, you didn't do what you told them you were going to do about returning the $3,000?

A. I didn't return the full $3,000 because I didn't get it.

Q. Didn't you agree to do that and accept $500 to pay the tax on the $3,000?

A. I accepted the five hundred on the theory upon which I took the five hundred.

Q. And you didn't carry out what you told them you would do?

(T. 1995)

A. I returned only the $500.

MR. BROOKS: That's all.

THE COURT: Suppose we take our afternoon recess at this time.

The jurors may retire and the witness may step down.

(The jury retired.)

(Short recess taken.)

THE COURT: You are finished with the witness, are you?

MR. BROOKS: Yes, sir.

THE COURT: Mr. Levy?

MY LEVY: No questions.

THE COURT: Mr. Coughlin?

MR. COUGHLIN: No questions.

THE COURT: Mr. Margiotti?

MR. MARGIOTTI: Yes, sir.

Cross Examination

BY MR. MARGIOTTI:

Q. Mr. Fenner, you first heard that you had been suggested as intermediary on April the 10th, 1942, when this letter was called to your attention, the letter of April 9th, is that right?

A. Yes, sir.

Q. And up until that time you had no knowledge that there was going to be any intermediary to be used in connection with any of the affairs of the Central Forging Company?

A. No, I

(T. 1096):

did not.

Q. And after discussing the matter with Mr. Davis, when he showed you that letter to which you have testified, the next thing that occurred was a telephone conversation with Mr. Reifsnyder?

A. In which he set the date and let me know the date of the 24th had been fixed.

Q. That's right. I just want to get this in chronological order. At that time he told you that he wanted the money for himself and he enumerated the purposes for which it was to be used?

A. He left certain intimations in my mind that certain things might be taken care of out of a fund.

Q. What he told you was that, first of all, he had to pay Hervey Smith $500 that was not reflected in the account?

A. Yes, he mentioned that again, although I had known that from him before.

Q. From whom before?

A. Mr. Don Reifsnyder.

Q. I see. Did he tell you what he was to pay $500 to Mr. Hervey Smith for?

A. Well, the explanation the explanation given me was very much like that given by Mr. Michael, that he had given a lot of service in the matters incident to the reorganization after the death of his father, and he did not know of any way that he could be compensated for all he had done.

Q. Well, did he give any reason for paying $500 out of his own pocket, his and Michael's pocket, and give this $500 to

(T. 1097):

Hervey Smith?—

A. No, I never knew it to be paid out of his pocket I knew it to be paid.

Q. Well, it was to be paid out of that $3,000. Let me put it this way: Did he give you any reason for paying $500 out of the $3,000 to Hervey Smith in this telephone conversation when he convinced you that you ought to be the intermediary?

A. In the matter before that he had arranged that that should be paid out of his fees, I understand. I stand corrected on that, what he was to get.

Q. Then he mentioned some lawyer named Groover

A. Yes, Clare Groover.

Q. Did he say how much Clare was to get?

A. No, he did not, other than made a general statement that he was dissatisfied.

Q. He was dissatisfied. He had to take care of him

A. Well, intimating that. I didn't know.

Q. I see. And the balance of the money, as I gather from your testimony, he wanted for his own use and Michael's own use because he was going in the Navy and he had a wife and children to take care of and maybe Michael was going, too, and they wanted to get as much money as they could to take care of their families?

A. The argument—

Q. Is that correct?

A. Mostly about himself.

Q. Mostly about himself. In other words, then, do I understand he wanted the money for his own use so he could

(T. 1098):

take care of his family, his wife and children, he wanted to leave a little money for his family while he was in the Navy?

A. Part of the money, I took it, would go to him for that purpose.

Q. I see. Then do I understand that you, when you heard the argument of that kind put up, you said, "Well, all right, I will go along and act as the intermediary," is that the way it happened?

A. Yes, sir.

Q. Now, then, when was that conversation that you had with Mr. Knight in which you asked him who the other intermediaries were that had been suggested as of April the 8th, 1942?

A. I can't just fix the date. All I can recall is a reply made to me, Mr. Knight understood that they were office associates of Don Reifsnyder's, at least he thought they were office associates of Don Reifsnyder's.

Q. That is what he thought?

A. I can't fix the time.

Q. Pardon me. Was that before the 24th of April when you got $500 at Mr. Knight's office, or was it after that date?

A. It was after that date.

Q. Do you recall how long afterwards?

A. I do not.

Q. Where is that letter? It was marked for identification.

(Exhibit G-21 was handed to Mr. Margiotti.)

Q. This letter that has been marked for identification

Government's Exhibit G-21, dated March the 11th, 1942, to your

(T. 1999):

letter to Mr. Davis, so you have testified?

A. Yes, sir.

Q. I note in this letter that the figures given by you as estimated costs, if the Court approves, included two items, one of $5,000 to Mr. Michael and one of $5,000 to Mr. Reifsnyder. Is that correct?

A. Yes, as I recall the letter as shown me, yes, sir. $5,000 to each of them.

Q. To each of them.

A. I cut those figures as I looked at the letter.

Q. All right. Now, where did you get these two figures?

A. I got all of these figures in Mr. Knight's office.

Q. I see. And did you have any discussion with either Mr. Michael or with Mr. Reifsnyder concerning that fee of $5,000 each?

A. I did not.

Q. Referred to in this letter?

A. I did not personally, no.

Q. Do you have any knowledge, or did you have any knowledge at the time you wrote this letter of how the fee of $5,000 each had been fixed for Mr. Michael and Mr. Reifsnyder?

A. I did not.

Q. Now, you know that subsequently there was a petition filed in court to fix their fees?

A. I know that from the matters in this proceeding.

I did not follow any of those proceedings before with regard to that.

Q. Did you know that at the time the petition was filed, as it appears here in evidence, it asked for $4,000 for Mr.

(T. 1100):

Michael and $4,000 for Mr. Reifsnyder?

A. The only knowledge that I can recall having is as I heard it in connection with the testimony in this proceeding.

Q. And do you have any knowledge, or did you on April the 24th have any knowledge of the reasons for the change from $5,000 apiece for these two men to $4,000 as mentioned in the petition?

A. I can't now recall having any knowledge of why the amounts were changed.

Q. Now, Mr. Fenner, at any time during the investigation of this case did either Mr. Michael or Mr. Reifsnyder or Mr. Michael's attorney, Mr. Jenkins, call on you to discuss this case with you?

A. Mr. Michael never called on me nor Mr. Reifsnyder; I was visited in my office in the summer of '44 by a gentleman who introduced himself as Mr. Jenkins, who claimed he was Mr. Michael's attorney.

Q. Dan Jenkins?

A. Dan Jenkins, I guess—or Mr. Jenkins.

Q. Was he there in behalf—I don't want to know what he said, I want to know, first, was he there in behalf of Mr. Reifsnyder and Mr. Michael?

A. Well, he introduced himself as Mr. Michael's attorney.

Q. What did he say to you?

MR. BROOKS: We object to that, if your Honor please.

THE COURT: When was this?

(T. 1401):

MR. MARGIOTTI: This was during the investigation, the Grand Jury investigation. This is Mr. Michael's attorney, Dan Jenkins, calling on this witness relative to his proposed testimony to be given to the Grand Jury. Of course, if Mr. Michael had done it there would be no question about it, but this is his attorney and he has admitted that Mr. Dan Jenkins is his attorney and is his attorney now and has been for some time and was in the Edington proceedings.

THE COURT: The difficulty is that Mr. Michael, although charged here, is not on trial, having entered a plea of guilty. Further, I am wondering to what extent Mr. Jenkins' statement could affect Mr. Michael.

MR. MARGIOTTI: Only to the extent that he is his lawyer; that's all.

THE COURT: I am a little worried, too, as to how it might affect any of the other defendants.

MR. LEVY: It won't affect us but I don't see why we should go into a collateral issue that is going to take up the time of this jury. We have sat here now for over two weeks.

MR. MARGIOTTI: Well, if you have sat here for

over two weeks I am not responsible for it, I will assure you.

MR. LEVY: I understand that and am not critical (T. 1102): about it.

THE COURT: We have all been here and maybe all of us would rather have been elsewhere. You know the jury has been locked up all during this time.

MR. MARGIOTTI: I would be for letting them go home.

THE COURT: I will take the responsibility for that.

MR. MARGIOTTI: May I put my motion on the record so you can rule intelligently on what we propose to prove?

THE COURT: Suppose you step up here a minute.

MR. MARGIOTTI: All right.

(At side bar:)

THE COURT: Do you know the substance of the expected answer?

MR. MARGIOTTI: That is what I was going to tell you. We now propose to prove by the witness on the stand that Dan Jenkins, attorney for Michael, visited him during the course of the Grand Jury investigation, and the investigation being conducted by the FBI prior to the time that Mr. Fenner was called be-

fore the Grand Jury, and that Mr. Jenkins asked the witness—told the witness that he was representing Mr. Michael and that Mr. Michael and Mr. Jenkins were very, very fine fellows

(T. 1103):

and that he hoped that in the investigation—

MR. LEVY: Reifsnyder and Michael were fine fellows.

MR. MARGIOTTI: Michael and Reifsnyder were fine fellows and that he hoped in the investigation, as well as in his statements to the Grand Jury that he would say or do nothing that would in any way implicate either Reifsnyder or Michael in the $3,000 proposition.

MR. BROOKS: How would that be admissible

MR. MARGIOTTI: Only on the theory, only on the theory that Dan Jenkins was Michael's attorney and he was acting for him, that is the only ground upon which it can be admitted.

THE COURT: If that is the only ground I think we have got to have more direct proof that he was so acting.

MR. MARGIOTTI: Well, Michael testified that Jenkins was his lawyer.

THE COURT: Well, now, just a moment.

MR. LEVY: Just a minute.

THE COURT: He may not have sent him up to this man's office.

MR. MARGIOTTI: He may not have.

THE COURT: I will let him say whether or not Mr. Jenkins came.

(T. 1104):

MR. MARGIOTTI: He said that.

THE COURT: But I am afraid you will have to get Mr. Jenkins to testify as to whether he came for Mr. Michael.

(Discussion off the record.)

THE COURT: You withdraw the question?

MR. MARGIOTTI: I will withdraw the offer.

THE COURT: All right.

MR. MARGIOTTI: That is best, Judge.

(Discussion off the record.)

BY MR. MARGIOTTI:

Q. Mr. Fenner, in your entire connection with the Central Forging Company from the time the Mr. Michael was appointed receiver until you left him after your trip to Bloomsburg—Wilkes-Barre, in correspondence, in papers, in conversation, was the name of Donald Johnson ever mentioned?

A. Not to me and not in my presence.

Q. Or to your knowledge?

A. Or to my knowledge.

(T. 1105):

BY MR. BROOKS:

Q. Mr. Fenner, you did make approximately $500 out of this deal, didn't you?

A. Yes, $500.

MR. BROOKS: That's all.

(Witness excused.)

* * * * * * * * *

(T. 1313):

ROBERT MICHAEL, called as a witness in behalf of the Government, in rebuttal, having previously been sworn, testified as follows:

Direct Examination

BY MR. PRATT:

* * * * * * * * *

(T. 1332):

Q. Now, at the time you had your conversation in company with Donald Reifsnyder, either at Mr. Knight's office or on any occasion, or with Mr. Fenner in the automobile, either going from Wilkes-Barre to Catawissa or from Catawissa to Wilkes-Barre, I will ask whether there was anything said, either by you or Reifsnyder, to the effect that—you or either one of you was intending to make application for service in the armed forces of the United States?

A. I don't ever recall Don Reifsnyder and I ever discussed that subject at all, and it is my absolute belief that we never talked of

(T. 1333):

it at that time.

Q. At that time and previous to the 24th of April, 1942, did you have any intention of applying for a commission or for service in the armed forces?

A. I do not believe—I know that I was not contemplating it at that time.

Q. Did you have any conversation during that period

with Donald Reifsnyder regarding his intention in that connection?

A. No, I do not recall any such conversation with Donald.

EXHIBIT G-3-A

Maxi Manufacturing Company

No. A1665

Catawissa, Pa., April 24, 1942

Pay to the order of Robt. D. Michael $8420.05

Eight thousand four hundred twenty and 05/100 Dollars

Catawissa National Bank
Catawissa Pa.

Maxi Manufacturing Company
I. Max Long, President
H. W. Davis, Treasurer

(Endorsed)
Robt. Michael
(Bank Stamps)

EXHIBIT G-5

Maxi Manufacturing Company

No. A1668

Catawissa, Pa., April 24, 1942

Pay to the Order of Edward R. Unangst $225.00

Two hundred twenty-five and 00/100 Dollars

Catawissa National Bank
Catawissa Pa.

Maxi Manufacturing Company
I. Max Long, President
H. W. Davis, Treasurer

(Endorsed)
Edward R. Unangst

Exhibits G-3-B and G-3-C

EXHIBIT G-3-B

Maxi Manufacturing Co.

No. A1666

Catawissa, Pa., April 24, 1942

Pay to the Order of Geo. L. Fenner $3,000.00

Three Thousand and 00/100 Dollars

Catawissa National Bank

Catawissa Pa.

Maxi Manufacturing Company

I. Max Long, President

H. W. Davis, Treasurer

(Endorsed)

Geo. L. Fenner

EXHIBIT G-3-C

Maxi Manufacturing Company

No. A1663

Catawissa, Pa., April 24, 1942

Pay to the Order of Robt. D. Michael, Trustee $8548.33

Eight thousand five hundred forty-eight and 33/100 Dollars

Catawissa National Bank

Catawissa Pa.

Maxi Manufacturing Company

I. Max Long, President

H. W. Davis, Treasurer

(Endorsed)

Robt. Michael, Trustee

(Bank Stamps).

Exhibits G-3-D and G-3-E

EXHIBIT G-3-D

Maxi Manufacturing Company

No. A1664

Catawissa, Pa., April 24, 1942

Pay to the Order of Harry S. Knight $5789.45

Five thousand seven hundred eighty-nine and 45/100 Dollars

Catawissa National Bank
Catawissa Pa.

Maxi Manufacturing Company
I. Max Long, President
H. W. Davis, Treasurer

(Endorsed)
Harry S. Knight
(Bank Stamps)

EXHIBIT G-3-E

Maxi Manufacturing Company

No. A1667

Catawissa, Pa., April 24, 1942

Pay to the Order of Harry S. Knight $2000.00

Two thousand and 00/100 Dollars

Catawissa National Bank
Catawissa Pa.

Maxi Manufacturing Company
I. Max Long, President
H. W. Davis, Treasurer

(Endorsed)
Harry S. Knight
(Bank Stamps)

Exhibit G-1-F

EXHIBIT G-1-F

In Re Central Forging Company, Debtor

No. 9822 in Bankruptcy
Under Chapter X

REPORT OF SUCCESSOR TRUSTEE

Prior to the time for hearing on the confirmation of the revised plan of reorganization, as approved by the vote of the requisite number of creditors, and prior to the application for fees and allowances by the various parties in interest, the successor trustee hereby submits a report of the assets to be acquired in the reorganization as an aid to the Court. The figures submitted below are taken from reports audited by Dobson Accounting Service, Wilkes-Barre, Pa.

Cash advanced by Maxi Manufacturing Company to pay bondholders and general creditors a/c plan	$17,000.00
Cash of debtor	133.90
Finished products	6,393.49
Parts in process	13,947.97
Raw materials	5,290.94
Unexpired insurance premiums	95.15
Cash surrender value of life insurance	1,199.11

Exhibit G-1-F

Accounts receivable, assigned and unassigned, adjusted	20,534.50
Total	$64,595.06
Against which the following obligations are due or become effective forthwith upon confirmation of the plan:	
Payment of bondholders and general creditors from cash advanced	17,000.00
Accrued wages and salaries, compensation insurance and payroll tax, notes and accounts payable	24,190.73
Total	$41,190.73

Recapitulation

Assets	$64,595.06
Liabilities	41,190.73
Balance	$23,404.33

The trustee calls the Court's attention to the fact that the Maxi Manufacturing Company has advanced $421.50 for the trustee's bond premium and expenses ($121.50) and the bond premium of the Equity Receiver in Columbia County ($300.00). These matters are covered in the trustee's requests for allowances and expenses and are to be adjusted between the trustee and the Maxi Company, if the plan is confirmed. However, with this considered the above balance is actually $22,082.83.

Further attention is called to the balance of $3,495.80 previously ordered paid, for the Columbia County Equity

proceedings ($2,975.80 less $300.00 bond premium mentioned in the preceding paragraph). This leaves $20,487.93 available for expenses and allowances to the various parties in interest.

Respectfully submitted,

(s) Don Reifsnyder,
Attorney for Robert Michael,
Successor Trustee

EXHIBIT G-1-G

ORDER OF CONFIRMATION OF REVISED PLAN OF REORGANIZATION

After proper notice by the Special Master, to all parties in interest, and pursuant to order of this Court, a hearing upon the application for confirmation of the revised plan of reorganization of the Central Forging Company was held in Scranton, Pa., on April 17th, 1942, at 2:00 P. M. it appeared from the report of the Special Master that more than the requisite 66 2/3% of all claimants of all classes voted in writing to accept the plan, in fact, only two bondholders owning $3500.00 in bonds dissented in all the classes made up of $97,500.00, in bonds and $38,830.58 in general claims. The files of the bankruptcy were offered in evidence to prove compliance with Article VII, Sec. 199 and Article V, pursuant to Section 221, Chapter X of the Bankruptcy Act of 1938. The affidavit of the Trustee was received in evidence to the effect that the

proposal of the plan and its acceptance were in good faith and were not made or procured by any means of promises forbidden by the Act. The costs and expenses of the proceeding and all incidentals thereto have been concurrently submitted to the Court for approval. There was submitted in evidence the Declaration of Trust by Edward R. Unangst, Escrow Agent whereunder he declared himself Trustee of funds in his hands so deposited to call within thirty (30) days of their issuance, the 5% debenture bonds of the Maxi Manufacturing Company to be issued in consummation of the proposed plan. Inasmuch as, this removes all creditors of the Debtor as security holders of the reorganized company compliance with the requirements of Sec. 221 (5) is met. Consequently, it appearing that the requirements of the Bankruptcy Act having been complied with faithfully and fully, it appearing that the plan is fair, equitable and feasible, and it further appearing that after hearing in open Court no objections to confirmation of said revised plan of reorganization were either filed, lodged or presented orally,

Now, therefore, it is ordered as follows:

1. The report of the Special Master upon the vote of the creditors affected by the plan is approved and ordered filed.

2. The Trustee's revised plan of reorganization dated February 26, 1942, is hereby confirmed.

3. The 5% callable general debenture bonds of the Maxi Manufacturing Company contemplated in the said plan are to be turned over to the Trustee and by him are to be delivered in accordance with the amounts allowable

thereon under the plan to creditors and bondholders of the evidence of indebtedness held by each. No distribution shall be made to general creditors whose claims were not filed with the Special Master before April 26, 1939, pursuant to order of this Court, unless said claims have been listed by the Trustee or scheduled by the Debtor on its books as fixed claims liquidated in amount and not disputed.

4. Upon receipt by the Trustee of the said debenture bonds of the Maxi Manufacturing Company, and upon the payment of all administration costs and expenses as allowed by this Court, within the limits of the funds as set forth in the Trustee's report filed April 15, 1942, the Trustee shall execute to the Maxi Manufacturing Company a Bill of Sale, or other instruments or deeds of title for all the assets, claims, patents, rights, franchises, cash, receivables and property of every kind, nature and description including trade names, trade marks, advertising media and good will, title and ownership of the Central Forging Company, free, clear and divested of all liens, encumbrances and claims of every kind and character.

5. The Central Forging Company having been found to be insolvent, the stock carries no rights under the revised plan of reorganization and the stockholders are barred from participation under the plan and/or assertion of rights as stockholders against the Debtor and/or Maxi Manufacturing Company. The Trustee is directed to effect cancellation of all stock on the Debtor's books. In accordance with the terms of the revised plan of reorganization all actions or rights of action against the Central Forging Company, its officers and/or stockholders are enjoined and ordered discontinued.

Exhibit G-1-H

6. The Trustees under the First Mortgage indenture executed by the Central Forging Company on August 18, 1923, securing the old bonds of the Central Forging Company are ordered to execute a cancellation of said Trust Indenture and to satisfy of record the lien of said mortgage upon the delivery by the Maxi Manufacturing Company of its 5% debenture bonds, pursuant to the plan of reorganization to the Trustee.

7. The Trustee is authorized to apply to this Court for such additional orders or relief as shall be found to be necessary in aid of consummating this revised plan of reorganization approved and confirmed herein.

Dated at Scranton in the Middle District of Pennsylvania this 17th day of April, 1942.

(S) ALBERT W. JOHNSON,
U. S. District Judge.

(Endorsed): Filed April 17, 1942, W. H. Mitchell, Clerk.

EXHIBIT G-1-H

ORDER ON FEES AND ALLOWANCES REQUESTED IN CONFIRMATION OF REVISED PLAN OF REORGANIZATION

Pursuant to due and proper notice, the requests by the various parties in interest for fees and allowances came on to be heard in open court on April 17, 1942, at 2:00 p. m. in Scranton, Pennsylvania. The Court has considered the written requests filed with the Clerk of the

Court by each interested party. Arguments in favor of each allowance and objections thereto were heard. The Court is thoroughly familiar with the entire proceedings,—a case that has terminated in a successful reorganization, assuring the production of the plant to the country and maintenance of employment to the community. The result has justified the work involved and the patience with which the Court has entertained the progress of the reorganization.

The payment of the court costs, receiver's fees and proceedings in the Columbia County Equity Court was first considered. By previous order of Court the sum of $2795.80 was approved for these purposes, as by reference thereto will appear. Inasmuch as the Trustee has already paid bond premiums of $300.00 approved therein, the balance of $2495.80 is confirmed and payment thereof is directed to be made to the persons entitled thereto under the former order of Court.

The Bondholders Protective Committee, made up of three members, and its counsel; F. Brewster Wickersham, Esq., requested reimbursement of expenses in the sum of $500.00, payment for the time and services of the Committee in the sum of $600.00 apiece, and attorney fees of $2000.00. The various parties in interest in open court asserted that these requests were fair and moderate in view of work and time devoted to the ramifications of this reorganization. The Court agrees. Consequently, the sum of $500.00 is directed to be paid to the Committee for expenses incurred, $1800.00 in fees for the time and work put in (each member to share equally) and $2000.00 as counsel fees for F. Brewster Wickersham, Esq., its attorney.

Exhibit G-1-H

Harry S. Knight, Esq, had applied previously for an allowance as attorney for petitioning creditors. This application had been referred to the Special Master, a hearing thereon was held with no objections to his request, and the Special Master has filed his report recommending the allowance of $7500.00 as fees and $289.45 as expenses. Mr. Knight voluntarily withdrew his request for $2000.00 of this amount in aid of a fair and equitable distribution by the Court of the moneys available for fees and allowances to all parties in interest. Since the inception of this case, Mr. Knight has been allowed nothing. In point of time, it can not be questioned that he has been indefatigable. In point of quality of his services, he has been called upon to and successfully sustained two appeals to the Circuit Court, actively participated in the formulation and consideration of two plans of reorganization, and has been a vital influence in maintaining the Debtor as a going concern. The only objection lodged against his claim was that he had presumed to act as counsel for the former trustee. This Court does not so find in his request for allowances, or in his actual participation in these involved proceedings. Because the interests of the petitioning creditors and the Trustee were at times alike is no reason to deny remuneration for work that preserved the estate and assisted in a successful reorganization. As reduced voluntarily by this petitioner, his request is fair and reasonable in view of the work performed, the results obtained and his position in his profession. Accordingly payment of $5500 as fees and the reimbursement of $289.45 is directed to be made to Harry S. Knight, Esq.

John Crolly, the Special Master, succeeded to that office upon the death of David Rosenthal. The great bulk

of the hearings in this case were heard and terminated by the latter. The present Special Master presided over the voting under which the first plan of reorganization was rejected, has countersigned the checks of the Debtor, and conducted the hearings and made his report upon the acceptance of the revised plan by the requisite amount of creditors. There were no other major considerations and only a few minor hearings before him. This Court in making allowances must also take into consideration the work performed and payments made to the previous Special Master. In view of all these considerations the Court believes that a proper allowance is $1000.00. Payment of $650.00 having been made on account, the balance of $350.00 is directed to be paid to John Crolly, Special Master.

David Schwartz as Special Master during the illness of John Crolly has asked for $150.00 as compensation for services rendered. For the work performed and responsibilities assumed the Court feels that an allowance of $50.00 is proper and orders payment thereof to David Schwartz, Esq.

Clair Groover, Esq. has presented a claim as attorney for Walter Compton, former Trustee of the Debtor, who resigned December 31, 1941. Thereafter the successor Trustee and his attorney have acted as the arm of the Court in formulating and securing the approval of the revised plan of reorganization. Consequently the consideration of Mr. Groover's petition is for services rendered to December 31, 1941. In July, 1941, this petitioner sought and secured an order awarding him $1600.00 for expenses and professional services rendered. At the time of considering said order and objections thereto, the Court stated that the allowance thereof was to be paid in full for serv-

ices rendered unless extra and unusual services were performed thereafter. From the claim presented it appears that the affairs of the Debtor and the administration of the estate required no such extra or unusual services from the time of said order to the resignation of the Trustee for whom Mr. Groover acted. Thus the Court affirms its prior order of allowance. Payment of $1600.00 is affirmed; $1200.00 having been paid on account, it is ordered that the balance of $400.00 be paid to Clair Groover, Esq. as attorney for Walter Compton, former Trustee herein.

Interim allowances have been made to Walter Compton, former Trustee, in the amount of $10,250.00 for services and certain expenses over an extensive period of time. The parties in interest affirmed, and the Court recognizes the high calibre of this Trustee's work, the long hours devoted to it, and the complicated problems of maintaining the Debtor as a going concern. The Court further is aware of the thought and work extended in formulating and submitting the first plan of reorganization. Whereas the Court is disposed to grant a further allowance, fairness and equity among all the parties entitled to receive payment from the funds on hand requires adjustments of the amounts requested in the light of what has been received. Mr. Compton sets forth travel of 22,000 miles in the course of performing his duties, as well as an itemization of work done beyond that for which an interim allowance has been made. From all the circumstances it is believed that for his expenses and additional services the sum of $952.53 is proper, and payment thereof is ordered to be made to Walter Compton.

The expenses itemized by Robert Michael, Successor Trustee, and his attorney are largely for mandatory ex-

penditures under previous obligations and orders. The claim for travel and telephone reimbursement is fully itemized and proper. Consequently the sum of $1166.55 for expenses of the Trustee as set forth in his request is ordered paid.

The request for compensation and fees by Robert Michael and his attorney, Don Reifsnyder, were considered in open Court. No objections thereto were made. In fact certain of the parties in interest volunteered a commendation of the ability and industry with which this case was handled by these petitioners. The Court recognizes that at the time of their appointment the first plan of reorganization had been rejected, the Debtor was unable to secure war contracts in its plant due to inability to secure a performance bond, the management who had cooperated to maintain the plant sought to be relieved of their duties, and the demands of the plant employees required immediate adjustment. Liquidation seemed inevitable. The Trustee and his attorney devised and submitted a plan of reorganization that has received the almost unanimous approval of all factions, and has assured the continuance of this enterprise. The Court believes that the commendation accorded Mr. Michael and Mr. Reifsnyder for their work and industry is merited. The itemization of the hours of work, investigation, conferences and travelling indicates fully the devotion of their time and talents to this matter. The Court believes that each has worked equally diligently and awards $3950.00 to Robert Michael and $3950.00 to Don Reifsnyder, his attorney, and orders the said amounts paid to each as allowances.

This fully exhausts the funds of $23,404.33 available for fees, allowances and expenses as itemized in the report.

of the Trustee filed April 15, 1942. This is a final order on allowances sought by all parties interested in this reorganization proceeding, and those not herein considered are excluded from seeking allowances at any future time.

Dated at Lewisburg, Pennsylvania, this 20th day of April, 1942.

(S) ALBERT W. JOHNSON,
U. S. District Judge.

EXHIBIT G-2-A

January 29, 1942

Don Reifsnyder, Esq.,
Scranton National Bank Building,
Scranton, Penna.

Dear Mr. Reifsnyder:

Re: Central Forging Company

I spent all of Wednesday afternoon with the officials of the Maxi Company to ascertain whether or not they would be interested in paying anything to acquire the Central Forging Company. There is a decided division of opinion among these people as to whether or not they should invest anything in the Central. Finally it was agreed to make the following proposition:

1. That they will pay to you in cash the sum of $17,000 for a clear and unencumbered title to the land, plant, machinery and equipment and all assets of every kind and character except accounts receivable, cash, goods in process, goods finished, and raw material, and will

waive its (Maxi Company's) claim to participate in the bonds of the Central Forging Company now held by the Maxi Company, aggregating $21,300.

(2) This proposition is made upon the condition that it be promptly accepted, and that the legal machinery to carry it into effect be promptly started.

(3) That if accepted, the plant be kept operating as heretofore until it can be taken over by the purchaser; the details of how this is to be done, and at the same time liquidate the current assets for the payment of expenses, to be worked out between the Maxi and the Trustee.

Maxi now has a plan to do this, which can be submitted at the proper time.

(4) If accepted, of course, the Maxi and Mr. Fred Long and Mr. Max Long would continue to co-operate in operating the Central as heretofore. As to the supplies now on hand, it is understood

that certain of these supplies will be consumed during the course of operation by the Trustee until a sale and delivery could be consummated. If any of these supplies remain unused at the time of the consummation they are to be included for the sale price. If at the time of the consummation there is an inventory on hand, the purchaser will arrange to take it over at cost to the Central Forging Co. This in addition to the purchase price above mentioned.

Our calculation is that the amount that we would pay in would be sufficient to pay to the bondholders, outside of the bonds held by Maxi, a dividend of 20%; and would

Exhibit G-2-A

leave over 5 to 8% to pay on the unsecured creditors, in addition to all of the expenses.

The audit was not completed when I was in Catawissa. From the work sheets Mr. Davis furnished the following statement of current assets and current liabilities:

Current Assets:

Accounts receivable		$21,812.69
Cash in bank—overdraft		123.14
Inventory:		
Supplies	$5,054.21	
In Process	13,947.97	
Finished	6,393.49	
Raw Material	5,290.94	30,686.61
		$52,376.16

Current Liabilities:

Assigned accounts	9,690.16	
Accounts payable	8,509.34	
Social Security Tax	1,355.83	
Pay Roll	3,397.72	22,953.05
Net current position January 1, 1942		$29,423.11

I am informed by Mr. Davis that upon a collection and liquidation of these assets they would produce the amount set out in the statement, so that there would be no shrinkage.

I am informed, also, that while this statement is of January 1st, 1942, that there would be no material difference in the current position from month to month over

Exhibit G-2-A

a period of a few months—that is, there might be in the next month less inventory but it would reflect itself in greater receivables; and the receivables might become less, which would reflect itself in the cash, and cash used to pay the payables, so that the net would remain about the same.

The printed plan of Mr. Compton shows there are priority claims of $1,080. There is payable as expenses to what might be called the Beckley or Smith crowd, allowed by the Federal Court

(Mr. Reifsnyder —3— Jan. 29, 1942)

$2500.; Add to these last two items a very rough estimate of the expenses, we would have a total of not to exceed $20,000 or $21,000; so that all of these could be paid out of the net current without even using any of the supplies, and have a few thousand dollars left.

I am strongly inclined to the opinion that the only procedure to be followed in order to accomplish the sale as above proposed would be to have a prompt adjudication in bankruptcy, and then a petition to sell at private sale, and before this it would be necessary, or at least expedient to agree with the Bondholders' Committee that they would accept this amount, or approximately the amount, and have them agree by a power of attorney to vote for Mr. Michaels as Trustee, at least insofar as their claims are unsecured, and then have Mrs. Beckley and the other small unsecured creditors agree to a sale such as above and to vote for Mr. Michaels as Trustee.

So far as any claims which the Maxi Company could control are concerned, I would be willing to have them vote for Mr. Michaels as Trustee.

Exhibit G-2-B

I am laying this before you promptly as per my promise so that if it appeals to you, you can take it up promptly which will be necessary under the offer.

I shall be absent from my office on Friday and Saturday of this week, and on Wednesday and Thursday of the following week. If at any time you desire to confer with me you had better call me on the telephone before coming here.

Very truly yours,
(s) Harry S. Knight

I enclose a carbon copy of this letter which you may want to hand to Mr. Michaels.
cc to Mr. Long

G-2-B

April 9, 1942

Mr. Homer Davis,
Catawissa, Pa.

Dear Homer:

This is to remind you to have printed the debentures on the form which I submitted to you, and which as I recollect it you took with you.

Last evening about 8 o'clock Don Reifsnyder called at my home. He said that he and Mr. Michaels had had dinner in Sunbury, had talked over in detail the problem which we discussed here for an hour or two about getting the extra money, and made a suggestion that it be paid to a lawyer whom he designated who would render a bill to

Exhibit G-2-B

the Maxi Company, namely, that the Maxi Company now pay to the Trustee $22,982 being $3,000 less than the amount we calculated and then later on pay the $3,000 to a lawyer to be designated by Don who would render a bill and they would arrange then to get this $3,000.

I was not impressed with carrying out this purpose through a stranger who had no occasion to do business for your plant, and knew none of you, never had been at the plant and never saw any of the parties. I suggested to Don that we would endeavor to protect him and that personally I would like to see it done through Mr. Fenner or young George Fenner; that in any event he would be perfectly justified in giving us a reduction of 15% on the receivables, especially in light of the fact that we were required to place at least one account, and probably more, in the hands of an attorney, and even if we collect it, it would cost us the 15% collection fees. 15% of the receivables taken over January 1 amounts to about $3500.00. It was then arranged that he would write me a letter stating that they could not agree to the deduction of 15% which would amount to about $3500 but they would agree to a flat deduction of $3000 and make the price $22,982.00 plus some odd cents, and that we would endeavor to make some arrangements through Mr. Fenner to work out a plan satisfactory.

I told him I could not talk to Fenner between now and the 17th because I was leaving today and would not be back until the night of the 15th at least.

If you feel that you can explain this to Mr. Fenner I would be very glad to have you take it up with him, and I will explain it more in detail when I get back, and am

Exhibit G-2-C

able to see him. If you feel it would be better for me to take it up in the first instance, you can let it go until I return.

Very truly yours,

On yellow sheet unsigned.

G-2-C

Stark, Bissell and Reifsnyder
Attorneys and Counselors at Law
Twelfth Floor Scranton National Bank Building
Scranton, Pa.

Lee P. Stark
William A. Bissell
Don Reifsnyder

April 9, 1942

Harry S. Knight, Esq.,
Sunbury Trust & Safe Deposit Bldg.,
Sunbury, Pa.

Re: Central Forging Company

Dear Mr. Knight:

To confirm our discussion in your office yesterday, I hereby give you the Trustee's answer to the question raised.

According to our original understanding, the Maxie Company was to take over the assets of the Central Forging Company for a total of $43,754.33 less certain deductions. From this amount there is an immediate deduction of $17,000.00 which is utilized exclusively for

Exhibit G-2-C

the payment of 20% to bondholders and 5% to unsecured creditors, leaving a balance of $26,754.33. From this is deducted $421.50, being the expenditures set forth in your letter of February 26th to me. This leaves $26,332.83. From this amount there is another proper deduction of $350.00 being the bookkeeping figure of Salesmen's advances which are uncollectible by either the Maxie Company, the Trustee, or anyone else. This leaves $25,983.83 and includes the amount to be paid by Maxie for everything including the accounts receivable.

Mr. Michael and I have gone over the history which you exhibit in connection with your attempts to collect these accounts receivable. It is perfectly clear that you will not collect all of them and the question that we tried to thrash out was what amount should be deducted from the figure last named to reflect the amount that you will not be able to collect.

The total amount of the accounts receivable is $23,534.50. It seems that we could debate this question for a long time and not come to any agreement. Your request to be allowed 20% seems to Mr. Michael and me to be too much, as that would amount to more than $4600.00. I have checked into other cases and note that 20% has been allowed for shrinkage in accounts receivable, but we don't feel that full amount should be allowed.

To compromise the situation, I suggest that a flat allowance of $3,000.00 is proper. Consequently we deducted $3,000.00 from the figure of $25,982.83, leaving the amount to be turned over to the Trustee for Administration expenses at $22,982.83. It is, of course, my understanding that

Exhibit G-1-D, also D-K-14

the $17,000.00 for creditors claims is in the hands of Mr. Uganst the Escrow Agent.

I shall assume that this arrangement is satisfactory in accordance with my understanding with you at your home last evening.

Yours very truly,
(signed) Don Reifsnyder

JDR:KB

Exhibit G-1-D
ALSO
Exhibit D-K-14

In The
District Court of the United States
for the Middle District of Pennsylvania
In the Matter of CENTRAL FORGING COMPANY a Pennsylvania Corporation, Debtor.

No. 9822 In Bankruptcy. Reorganization Proceedings Under Chapter X.

PROPOSAL OF A REVISED PLAN OF REORGANIZATION

Robert Michael, successor Trustee of the Central Forging Company, the above named Debtor, proposes the annexed plan for the reorganization of said Debtor, states to the Court that in the opinion of said Trustee the same is fair.

equitable and feasible, and hereby seeks the approval of said Plan by the Court, pursuant to the provisions of Chapter X of the Bankruptcy Act, commonly known as the Chandler Act:

1. STATEMENT OF COMPANY'S LIABILITIES.

All debts having priority have been paid to avoid accumulation of penalties and interest, or have been withdrawn as claims against the estate of the Debtor.

First Mortgage Bonds of the Debtor are outstanding to the amount of $97,500, excluding interest unpaid.

Unsecured debts filed and approved and which have been allowed by the Special Master, pursuant to the order of Court dated March 25, 1939, as set forth in the Trustee's original plan of reorganization, total $38,830.58, exclusive of interest.

Stock issues of the Debtor include Preferred Stock of $71,225.00, Common Stock of $102,570.00.

2. STOCKHOLDERS.

Due to the adjudicated insolvency of the Debtor, there is no equity for stockholders and they have no right to participate in this or any other plan; and as part of this plan all stockholders will be required to return to the Trustee their certificates representing capital stock in Central Forging Company, and the Court will be requested without further notice to enter an order cancelling all capital stock of Central Forging Company.

3. CREDITORS TO BE AFFECTED BY PLAN.

All the creditors of the Central Forging Company are affected by this plan, and the two classes as fixed by this Court are participating therein.

Exhibit G-1-D, also D-K-14

4. ACCRUED INTEREST.

Since interest on all obligations has accrued from approximately the same time the inclusion thereof would increase the amount, but not the proportionate share of each creditor's benefits in the amount involved for the purposes of consummating this plan. Hence no interest is calculated or capitalized on any indebtedness.

5. MERGER WITH MAXI MANUFACTURING COMPANY, a corporation organized and doing business under the laws of Pennsylvania, is contemplated herein. All of the assets, claims, patents, rights, franchises, cash, receivables, and property of every kind, nature and description, including trade names, trade marks, advertising media, and good will, title and ownership to which is vested in the Central Forging Company and/or the Trustee and or the Successor Trustee thereof under Chapter X of the National Bankruptcy Act commonly known as the Chandler Act, are by proper instrument or instruments good and sufficient in law to be transferred to and title and ownership thereof to become vested in the Maxi Manufacturing Company, its successors and assigns, as a going concern, free, clear and divested of all liens, encumbrances and claims of every kind and character upon the acceptance of this plan pursuant to law and compliance with the provisions thereof.

6. Payment of Secured Creditors of Central Forging Company, Debtor, i. e. the bondholders, is to be made as follows:

Upon the surrender of each $1000 par value bond of Central Forging Company, with coupons attached, there shall be issued a $200. par value general debenture bonds of the Maxi Manufacturing Company, bearing interest at 5% per annum, to commence one month after the date of issue,

and to be callable at any time after issue, at par and accrued interest. The acceptance of said debenture bond in exchange for said Central Forging Company bond shall be in full satisfaction of all rights of each such bondholder of the Central Forging Company, both as regards the secured and unsecured portion of each such Central Forging Company bond surrendered for cancellation, pursuant to this plan.

7. Payment of Unsecured Creditors of Central Forging Company, Debtor, is to be made as follows:

The Maxi Manufacturing Company will issue its general debenture bonds bearing interest at 5% per annum, commencing thirty days after issue, and callable at par and accrued interest at any time after issue in the par value amount of five per cent, of all unsecured claims approved and allowed against the Central Forging Company, Debtor, by the Special Master as of March 25, 1939, upon assignment of each of said claims to Maxi Manufacturing Company, or to its nominee.

8. Property to be Dealt with by the Plan and Litigation to be Ended.

It is intended that all property, of every kind and character, and wheresoever situated, of the Debtor and its Trustee and Successor Trustee, will be dealt with by this plan, and transferred to the Maxi Manufacturing Company, and that the consummation of this plan shall be considered a settlement and discontinuance of all actions or rights of action against the Central Forging Company and its officers and/or stockholders, or any of them.

9. Payment of Fees and Expenses of Receivership in the Equity Court of Columbia County, Pennsylvania, as allowed

Exhibit G-1-D, also D-K-14

and approved by the United States District Court for the Middle District of Pennsylvania, shall be paid in full in cash by the Trustee aforesaid upon acceptance of the plan according to law.

10. All Taxes, Costs and Expenses of Reorganization and Administration as allowed by the United States Court for the Middle District of Pennsylvania, as well as all expenses of consummating this plan of reorganization, shall be paid in cash by the Trustee aforesaid.

11. Additional Means for Execution of the Plan.

In addition to the means herein provided, the Trustees under the First Mortgage Indenture executed by the Debtor on August 18, 1923, securing the old bonds of the Central Forging Company, shall execute a cancellation of said Trust Indenture and such satisfaction of the lien of said mortgage as may be necessary.

Respectfully submitted,
Robert Michael,
Successor Trustee of Central
Forging Company.

February 26, 1942.

Don Reifsnyder,
Attorney of Robert Michael, Trustee
Scranton National Bank Building,
Scranton, Pennsylvania.

Exhibit G-1-E, also D-K-15

Exhibit G-1-E.

ALSO

Exhibit D-K-15

In Re: Central Forging Company, Debtor.

No. 9822 in Bankruptcy Under Chapter X

OPINION

A revised plan of reorganization was filed by Robert Michael, Successor Trustee of the Debtor, on February 27, 1942. By Order of Court, March 16, 1942, was set as the day for hearing objections, if any to said plan. A hearing thereon was held in open Court, March 16, 1942, at 11 A. M., at Scranton. Proof of the mailing of notices pursuant to order of Court was received which is a part of the records of the case. No objections were filed of record or offered in open Court.

We find that the revised plan of reorganization is fair, equitable and feasible. The various classes of creditors are properly classified and the members of each class are provided for equally. We hereby approve said plan as filed and find that it may properly be submitted to all creditors and parties in interest pursuant to the provisions of Chapter X of the Bankruptcy Act of 1938. Dated at Scranton this 16th day of March, 1942.

(Signed) Albert W. Johnson,
U. S. District Judge.

Exhibit G-1-E, also D-K-15

Exhibit G-1-E

ALSO

Exhibit D-K-15

In Re: Central Forging Company, Debtor.

No. 9822 In Bankruptcy Under Chapter X

ORDER

At Scranton, in said District on the 16th day of March, 1942, a hearing having been held on this 16th day of March, 1942, pursuant to the order of this court dated February 27, 1942, on the revised plan or reorganization of the Central Forging Company, the above named debtor, prepared and filed herein by Robert Michael, Trustee of said debtor and for the consideration of any objections which might be made by any creditor or stockholder herein, and notice of said hearing having been given as required by Section 171 of the Act of Congress relating to Bankruptcy, and in accordance with the said order of February 27, 1942, and no objections thereon having been filed, or presented in open court and it appearing that the Schedule of indebtedness in this case being greatly less than Three Million ($3,000,000.00) Dollars,

Now, the Court being of the opinion that said revised plan of reorganization complied with the provisions in Section 216 of the said Act and is fair and equitable and feasible and the Court having filed its opinion thereon dated March 16, 1942,

Exhibit G-1-E, also D-K-15

It is ordered,

That said revised plan of reorganization filed by Robert Michael be and it is hereby approved.

It is further ordered, that the summary of said plan annexed hereto and marked Exhibit "A" and made part hereof, be and it is hereby approved as the summary required by Section 175-1 of said act,

And it is further ordered, that the summary of the Judge's approval of the opinion marked Exhibit "B" and made a part hereof be and it is hereby approved as the summary required by Section 175-2 of said Act,

And it is further ordered, that on or before March 20th, 1942, the said Trustee shall transmit by mail to each creditor and stockholder of the said debtor who is affected by the said plan, at his address, appearing upon the records of the Special Master, or upon the debtor's books or otherwise known to him, a copy of the said plan together with a copy of the summary hereof approved, the summary of the opinion of the Judge dated March 16, 1942, herein approved, together with a copy of this order, and appropriate forms for acceptance or rejection of the said plan of reorganization.

And it is further ordered, that April 1st, 1942, be and it is hereby affixed as the last day of the time within which creditors and parties in interest herein affected by said plan, may accept the same in writing filed with John W. Crolly, Esq., Special Master herein, 410 Lincoln Trust Building, Scranton, Pa., and such filings with Special Master shall be determined filing in this Court.

(Signed) Albert W. Johnson,
U. S. District Judge.

Exhibit G-1-E, also D-K-15

EXHIBIT "A"

SUMMARY OF REVISED PLAN OF REORGANIZATION

All debts having priority having been paid and the insolvency of the debtor having been established, this plan deals with the first mortgage bonds of the debtor and the unsecured debts filed and approved.

The debtor is to be merged with the Maxi Manufacturing Company, a Pennsylvania corporation which will issue, upon the surrender of debtor's mortgage bonds, 20% in par value callable bonds of the Maxi Manufacturing Company and in return for the surrender of debtor's general claims, 5% in par value, callable debenture bonds of the Maxi Manufacturing Company, both exclusive of interest.

All property of every kind and character of the debtor is to be transferred to the Maxi Manufacturing Company and the consummation of this plan shall be considered a settlement and discontinuance of all actions or rights of action against the Central Forging Company, its officers and/or stockholders and upon acceptance of the plan, the Trustee under the first mortgage indenture executed by the debtor on August 18th, 1923, securing the mortgage bonds of the Central Forging Company, shall execute a cancellation of said Trust Indenture shall satisfy the lien of said mortgage.

Administration costs and expenses and Columbia County Equity Court costs and fees are to be paid hereunder.

Exhibit G-1-E, also D-K-15

EXHIBIT "B"

SUMMARY OF THE OPINION OF THE COURT APPROVING THE PLAN

On March 16, 1942, Honorable Albert W. Johnson, United States District Judge filed an opinion reciting that no objections to the proposed plan had been filed or advanced at the hearing in open court. The proof of proper mailing of notices had been submitted and the Plan after analysis was fair and equitable and feasible and dealt fairly with creditors properly classified.

CENTRAL FORGING COMPANY, Debtor
No. 9822 In Bankruptcy

VOTE ON REVISED PLAN OF REORGANIZATION*

To:

John W. Crolly, Special Master
410 Lincoln Trust Building
Scranton, Pennsylvania

Name of Creditor:

Class of Claim:

Please check (√)

Mortgage Bond ☐

General Creditor ☐

Number

*This form must be filed with the Special Master before April 1, 1942.

Exhibit G-1-E, also D-K-15

Amount of Claim:

Vote. Accept Plan ☐
Reject Plan ☐

Signature: (Please indicate authority, if signed in representative capacity.)

United States Court
for the Middle District of Pennsylvania

In the matter of Central Forging Company, Debtor.

No. 9822 In Bankruptcy Under Chapter X

NOTICE OF REVISED PLAN OR REORGANIZATION

To All Creditors, Stockholders, Individual Trustees and Parties in Trust of the above Debtor Corporation:

The Court has fixed Monday, March 16, 1942 at 11 A. M. as the time and the Federal Court at Scranton, Penna. as the place to hear exceptions and objections, if any there be, to the trustee's amended and revised plan of re-organization filed on February 27, 1942. Copies of said plan are on file with the Clerk of the U. S. District Court at Lewisburg and Scranton, at the office of the Special Master, John W. Crolly, Scranton, at the office of the Trustee, 1210 Scranton National Bank Building, Scranton, and at the office of the Debtor at Catawissa, Pa. Said plan contemplates a merger of the Debtor with Maxi Mfg. Co., a Pennsylvania Corporation, the surrender of

debtor's mortgage bonds in return for twenty per cent. in par value callable debenture bonds of the Maxi Mfg. Co., the surrender of general claims against the debtor in return for five per cent. in par value callable debenture bonds of the Maxi Mfg. Co., both exclusive of interest, the payment of administration expenses and Columbia County Equity Court costs and fees, the termination of all litigation and the elimination of all rights of stockholders of the debtor.

Dated at Scranton, Pa., this 4th day of March, 1942 under order of court.

William H. Mitchell,
Clerk U. S. District Court.

EXHIBIT D-K-10

Stark, Bissell and Reifsnyder
Scranton, Pa.
February 17, 1942

Re: Central Forging Company, Debtor

Harry S. Knight, Esq.
Sunbury, Pa.

Dear Mr. Knight:

I enclose the revised plan of reorganization for your consideration and suggestions. In connection therewith I would like to set forth my understanding of this transaction as follows:

1. The Maxi Manufacturing Company is to take over the assets of the Central Forging Company as of December 31, 1941, conditioned upon the acceptance of the plan. In other words if the plan for some unforeseen reason fails

Exhibit D-K-10

to receive the acceptance of the required number of creditors of all classes this understanding is null and void. Otherwise the Maxi Manufacturing Company agrees as follows:

Cash Purchase	$17,000.00	
For cash on hand and in bank 12/31/41	133.90	
For finished products as of 12/31/41	6,393.49	
For parts in process as of 12/31/41	13,947.97	
For raw materials as of 12/31/41	5,290.94	
For unexpired insurance premiums as of 12/31/41	95.15	
Cash value of life insurance as of 12/31/41	1,199.11	
For advances to salesmen as of 12/31/41	$350.00	
	$44,410.56	$44,410.56
Less:		
A total of accrued wages and salaries, compensation insurance and pay roll tax, notes and accounts payable as of 12/31/41	24,190.73	
against which is credited Accounts Receivable assigned and unassigned as of 12/31/41	23,534.50	656.23
		$43,754.33

Exhibit D-K-10

N. B. In the above consideration we have excluded any amount for factory supplies, tools, fuel and office supplies, which have no value in liquidation, and which were covered in my telephone conversation of Monday, February 16th.

2. I would appreciate your securing from Homer Davis an authoritative list of the names of all creditors and stockholders and parties in interest, as set forth in the proposed order of Court, with the amounts thereof and the addresses thereof.

3. I would also like from Homer Davis a statement of what expenses of the Columbia County receivership have already been paid, and what remain to be paid under the order of the Federal Court allowing same.

4. You will note in this plan of reorganization that I have withdrawn from consideration the wage claims of Fred and Max Long, contrary to my understanding with you. This is done for two reasons.

(a) Mr. Holmes of the bondholders' committee has a personal animus against Fred Long.

(b) Dr. Beckley's brother had an alleged wage claim thrown out, and in talking to him I felt this was a sore point. Inasmuch as it does not amount to a great deal I think that Mr. Long should cooperate in removing all possible irritating features from the eyes of the prima donnas that we have to deal with. I think further that the potential operating profits since January first will more than make up for all items of this nature.

Exhibit D-K-10

5. I likewise enclose the proposed notice to be sent by the First National Bank of Catawissa. You may edit the form as you see fit. However, I do believe that this notice should not be enclosed with the notices of the plan sent by the Trustee but should go out concurrently to the same list of creditors in unfranked envelopes. Inasmuch as I am setting up the sum of $225.00 to cover the expenses of the escrow agreement I would think that this should not be a major obstacle.

As soon as this plan is approved by you please return it to me and I will submit it to the Court. As I told you I was trying to aim on submitting it on February 27th. If it is in order sooner I see no reason for waiting, because after the notices go out I think it advisable to see the attorneys for all parties in interest and discuss with them personally the way the whole matter will shape up, and how the allowances can be made to fit, if the United States District Court so indicates.

Yours very truly,

(s) Don Reifsnyder

JDR:M N.S. This was dictated before my phone conversation. JDR

EXHIBIT D-K-13

February 23, 1942

Don Reifsnyder, Esq.,
Attorney at Law,
Scranton National Bank Building,
Scranton, Penna.

Dear Don:

Re: Central Forging Company

I am enclosing herewith a re-draft of the Plan, in accordance with your request over the telephone.

You will note I have slightly changed the form which is, of course, immaterial; have changed the wording of paragraph 2, and inserted a new paragraph 3; have re-drafted paragraph 4, changed the amount of the first mortgage bonds in paragraph 1; in your 5 slightly changed the language and changed the number to 6; slightly changed the language in your paragraph 6 and changed the number to 7; inserted a new paragraph between your 6 and 7, being new paragraph 8; changed then your 7 to 9, and inserted a new paragraph 11 after your paragraph 8, which with the above inserts becomes 10; and have omitted your last paragraph and endeavored to embody it in the preliminary statement; and have provided that it should be signed by yourself and Mr. Michael.

The order I am leaving to be drafted by you along the lines of your letter. However, I take it that the present notices on this preliminary hearing would not be sent out by Mr. Michael but would be sent out, if not by Crolly, by yourself, and that this order provides merely for a time for

Exhibit D-K-13

the hearing before Judge Johnson, and can be on a ten day notice. In fixing date for this hearing for the early part of March, I would suggest that you steer clear of March 11th and March 20th.

Of course, as you well understand, at this hearing the only question for the Judge to decide will be, Is the Plan fair, equitable and feasible. If he so considers it, then he will draft his opinion accordingly, approving the plan somewhat along the line of his opinion of January 8, 1941 on the Walter Compton plan as printed in the pamphlet; and in this opinion you should see that there is embodied the provisions in the latter part of the opinion in the Walter Compton pamphlet; that is, from the last paragraph on page 21, and including the provisions on page 22.

I note that in that order the Court is using 60 and 30 days, I feel that this much time is not required, and that you can boil this down to a very much shorter time.

After this, of course, the plan itself with the opinion, must be sent out to the creditors, as required by Section 175.

As you know, with this plan a form of vote must be mailed out, and I have no doubt you have in your possession the form which was used by Mr. Compton. You will note in that form that it was provided that the vote should be sent to the Clerk of the United States Court in the Federal Building at Lewisburg, and the votes were so sent, but it seemed to be the idea of Mr. Glass then a Deputy Clerk, that they should be counted by some person, and notwithstanding my feeling that the count was then in the hands of the Court or his Clerk they were nevertheless referred to Mr. Crolly to go through the motions of a count.

Exhibit D-K-13

You will see that this is not done in this particular case, as you very wisely suggest in your letter.

I am enclosing herewith a list of all the interested parties to whom notices were mailed upon submission of the former plan. This was given to me by Homer Davis, and after it has served its purpose I would appreciate if you will return it to him.

Shortage

I have permitted the provisions which were drafted by you regarding the amounts to be paid to the secured and the unsecured creditors to stand, with the understanding that we are not to pay more than $17,000 for the assets outside of the inventory. To pay these percentages, it will require $1951 for the 5% on the unsecured, and $15,240 for the 20% to the secured, exclusive of the $21,300 worth of bonds held by the Maxi Company. In other words, the set-up will be as follows:

5% of $38,830	equals	$1,941.50
20% of $76,200	"	15,240.00
		17,181.50
Amount to be paid		17,000.00
	Shortage	181.50

I am leaving this stand upon condition that this shortage of $181.50 will be made up to the Maxi Company by deducting it from the amount which it shall pay for the inventory.

Exhibit D-K-13.

There is another amount for fees which was called to my attention yesterday by Mr. Long: The late Judge Kreisher, before he became Judge, was one of the attorneys who filed the original petition for reorganization and conducted the hearings before Judge Watson and claims $200 for this service, and Mr. Long was under the impression he had filed this claim with the Special Master. Whether he has or not, some provision should be made for the payment of this modest amount.

It is then understood that we pay for the inventory as set out in your letter of February 17th except that the item of $350 for advances to salesmen is to be eliminated, and also the item of excess of $181.50 above, is to be deducted, and of course, we are not to pay anything for the supplies, and that will leave the Maxi Company the obligation to make up the balance of my fees, to wit $2,000. This latter, of course, is a matter between ourselves.

Mr. Davis asked me what disposition should be made of the moneys paid out on account of expenses after January 1, 1942, which would be ordinarily chargeable against administrative expenses, and which items were not included in the Balance Sheet of Mr. Dobson when we made our calculations. He stated that his impression was that there were certain payments made after January 1st to Mr. Crolly, which did not appear as payables in the January 1st Financial Statement. I stated to him, and it is my understanding, that all of the payables which appear in the Dobson Statement, except the item of $5,213.52 for interest and except those which have since been paid are to be paid out of the funds in the usual course, but that nothing is to

be paid out of these funds which applies to administration expenses, so that if anything has been paid to Mr. Crolly since January 1st it is to be deducted from the final balance of the amount which the Maxi will pay for the current assets.

Before you file this plan I would like to be satisfied that the claims proved and allowed amount to no more than the $38,830.52 which appears in the original printed plan, and to that end I would very much appreciate if you will have some one make me up a list of the claims as allowed up to the final date fixed for the allowing of claims, and ask Mr. Crolly to certify that it is a correct list with the amounts of all claims allowed by him up to that time, and that the time has expired for allowing them.

Thank you for your reference to the case in 32 Fed. Supp. 827 with relation to the sale of a corporate name. Abstractly it doubtless is true that the name cannot be sold, for the reason that the name is something which is allocated by the Chartering powers of the State. Nevertheless, we have a statute in Pennsylvania which provides for the revamping of a corporation under the old charter when a company acquires the franchise by judicial sale, and had that question been raised before the Court and the Court decided accordingly I feel that the effect would have been that the new corporation would have the right to use the old name. I believe a provision could be put into our Plan which would cover this, but in view of the fact that you already have in the word "franchise" and that the vendees will likely never want to use the words "Central Forging" I deem it wise to insert no more.

Exhibit D-K-13

Authority to Maxi to Create Loan

Work is now in process to have waivers signed for a stockholders' meeting to increase the loan of the Maxi to fit into the plan, and this will be completed very shortly, and a short deed of trust made, and your form as I see it used to send out to the creditors. It may be possible that it will not go out on the same day that notices go out but surely within a few days thereafter.

Yours very truly,

(T. 744):

Now comes Harry S. Knight, defendant—

THE COURT: Do you have to read it? You know you will save yourself money on your bill if you don't

(T 745):

read all these things into the record. Do you want to read them into the record?

MR. LEVY: The Court will presently see why I am making this statement.

THE COURT: Oh, all right.

MR. LEVY: Now comes Harry S. Knight, defendant in above entitled case at the close of the evidence for the United States and moves the Court to give the following instructions to the jury: The Court instructs the jury to find the defendant, Harry S. Knight, not guilty, and in support of that, and so that the Government may know our contentions at the time that we argue on Monday, I would like to elaborate upon that and set forth our five reasons at the present time.

First, under the evidence—

THE COURT: Well, Mr. Levy, do you have these reasons in writing?

MR. LEVY: I do not have them in writing, if your Honor please.

THE COURT: All right.

MR. LEVY: Under the evidence—

MR. MARGIOTTI: As I understand it, he is giving the notice of what he is going to do.

MR. LEVY: Under the evidence in the case the alleged embezzled funds, the $3,000, never came into the

(T. 746):

charge of the accused, Robert Michael, as trustee of the reorganization debtor. In fact the indictment expressly charges, and the testimony offered by the government in support of the charges tends only to prove that the $3,000 was paid to the defendant Robert Michael, individually, and not as trustee of the said Central Forging Company, and to J. Donald Reifsnyder.

Second, the testimony fails to prove that the funds ever were in custodial legis of the United States District Court either as a bankruptcy court or a reorganization court or ever became subject to the jurisdiction of the court or belonging to the estate of a bankrupt or came into Michael's charge as trustee, or that there was any controversy in relation to the disposition of the same by which the court would have jurisdiction over it or that in any event the estate of the Central Forging Company was entitled to it.

The third count in the indictment charges the conspiracy to violate Section 29 (a) of the Bankruptcy Act in a manner described in the first and second counts in the indictment. The proof of a violation of the Bankruptcy Act under Section 29 (a) in the first and second counts does not show such a violation and, therefore, the count of conspiracy necessarily falls.

Fourth, that Harry S. Knight cannot be prosecuted (T. 747):

for any offense arising under the Bankruptcy Act because the indictment was not found and filed in the court within the meaning of the law within three years after the commission of the offense as provided under Title 11, U.S.C.A., Section 52 (d).

Fifth, the proof in the case not only fails to show an unlawful transfer of accounts receivable of the estate of the Central Forging Company but shows an unlawful transfer pursuant to the plan of reorganization approved by the parties in interest and confirmed by the court.

Upon those grounds we will argue our motion for a directed verdict.

* * * * * * * *

(T. 1374):

(The following motion was presented by Mr. Levy:

"Under the law and the evidence in the case, the defendant Harry S. Knight is not guilty."

After due argument supporting the motion, the motion was denied and an exception noted by the Court.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U.S.D.J.)

* * * * * * * *

(T. 1378):

(Summation by Mr. Margiotti in behalf of Defendant Johnson completed.)

Summation by Mr. Pratt

MR. PRATT: If the Court please, ladies and gentlemen: The distinguished gentlemen who argued this case to you on behalf of the defendants took something in excess of eight hours. Each of them stated by complimenting the jury, paying their respects to Government counsel and to the other counsel for the defense, complimenting the Court, complimenting the Jury on the fine patience that you have shown in listening to the evidence and to their addresses. I am not going to enlarge on any of that, I think you have heard enough of that. I will just say I agree with them in everything they have said in that regard, I marveled at your patience, it is quite remarkable and something most unusual for you ladies and gentlemen to have to sit and listen to hour after hour, say nothing of hour after hour of evidence.

I do want to say one word, however, about the duty and responsibility which Mr. Brooks and I have in representing the Government in prosecuting this case, or, indeed, in prosecuting
(T. 1379):
any case: We come into Court with just as heavy a duty as is imposed on defense counsel; we don't come in here with doubt in our minds; we don't start unless we are convinced that we have a righteous cause to present. We recognize our responsibility and we recognize our duty to the Government of the United States and it is not a light burden, it is not a light burden.

Now, I have listened intently to the evidence, I have listened intently to the defense argument and there is some doubt in my mind, and there may be in yours, as to just what the defense is. After all, it seems to me that the defense

consists very largely in trying Michael and Reifsnyder instead of trying the defendants. That's a very, very common practice, to try somebody else, not the defendant. Now the result: The building of a vast smoke screen to cover up, to obscure the real issues in this case. You may think from all of the time that has been devoted in the evidence and in the argument that this is a case of great complexity; it isn't anything of the sort, it is a vary simple case and what I want to do now is to get you back on the "beam," the defense has carried you away, away in an effort to obscure the real issue. Now let's get back down to brass tacks.

What is this case? As I said, it is a simple case, it relates to the diversion of $3000 from the assets of the trusteeship of the Central Forging Company, $3000, the diversion

(T. 1380):

of that amount of money away from where it belonged in this trust estate into the pockets of someone else by fraud, by false records, by a succession of acts the purpose of which was to cover up the fact that this $3000 was being diverted.

The three counts in the indictment have been explained to you and I am sure you thoroughly understand them. First it is charged that Michael misappropriated this $3000 and that the other defendants aided and abetted. Mr. Margiotti termed it "helped" Michael in his diversion, or embezzlement, or misappropriation of this $3000.

The second count also charges that these defendants aided and abetted—helped—Michael in the improper transfer of $3000 of the accounts receivable with the same pur-

pose in view. So far as the first two counts are concerned, they are dependent on exactly the same evidence.

Now, the Court will tell you, I am sure, that aiders and abetters stand in the same position as the principal. Anyone who aids and abets in the commission of an offense becomes a principal and when you have several who thus aid and abet you have, in effect, a conspiracy, and conspiracy definitely is charged in the third count.

Now, a conspiracy is nothing more nor less than a concert of actions on the part of several persons to do an unlawful thing. And it isn't necessary that they agree at the outset on what is to be done, but anyone who comes into this plan or

(T. 1381):

conspiracy, or scheme, whatever you call it, who comes in at any stage of the proceedings adopts what has gone on before and is responsible for what any one of his co-conspirators do during the course of the conspiracy. And that is equally true in connection with the aiding and abetting the commission of an offense. Now, that's all there is to this case; it relates to $3000 of the assets of this trust estate, this bankruptcy trust in the hands of Michael as Trustee.

Now, the early history of the Central Forging Company doesn't enter into this case except in a most remote degree. It is clear—and that is about as far as we have to go—it is clear that back in 1938 a proceeding was commenced for a reorganization of the Central Forging Company because it was in financial difficulties. The former trustee was appointed, attempted to work out a plan of reorganization and it was rejected. It appears, further, that in con-

nection with the whole litigation from start to finish there was a considerable, acrimonious dispute between various people, or groups, who were interested in the Central Forging Company, and, indeed, in the Maxi Company, which was a sort, not a partnership of Central Forging but they were owned almost jointly, there was an interlocking relationship between Maxi and Central Forging Company which involved this same acrimonious dispute between the various classes of creditors, stockholders and bondholders.

Now, this case starts with the circumstances attending (T. 1382):

the appointment of Robert Michael as trustee of the Central Forging Company. Please remember that the Central Forging Company was at Catawissa, Pennsylvania, which is about seventy or seventy-five miles from Scranton, and when you consider the matter I think you will observe the significance of this fact: Here was a concern in Catawissa engaged in forging, in some sort of manufacturing that had to do with, I think, valves or fittings or something of that sort, perhaps, relating to the oil industry. It hasn't appeared particularly in the evidence and I don't know that it is important, although it has appeared that there was some rather necessary connection between the two companies. But here was this forging concern in Catawissa. Now, who was selected as trustee upon the resignation of Mr. Compton, whom did they select as trustee and as attorney for the trustee? They selected Don Johnson's golf associate, his golf pal; they selected as trustee for this industrial concern in the forging business a man who was the manager of a country club. Now, does that indicate the fact, of his being the manager of the country club, does that indicate to your minds that they were selecting

a man who was eminently qualified to run a forging concern? Is there the slightest evidence that Robert Michael had any of the qualifications which would be useful in operating a forging company? And isn't it significant that they took a man seventy-five miles from Catawissa, the manager of a country club and another man from Scranton, a lawyer, a,

(T. 1383):

brilliant young man no doubt, they selected those two, these close friends of Donald Johnson, and put them in charge of the operation and the expected reorganization of a concern at Catawissa; and Catawissa, in fact, was eight or ten miles from Bloomsburg, twenty-five miles, perhaps, from Sunbury, twenty-eight miles from Lewisburg, where Judge Johnson usually held court—instead of selecting somebody in the industry or with some industrial experience they come to Scranton and they pick the manager of a country club to run a forging company. Now, I think there is some significance in that situation.

Now let's go back to the start again. In November or early December, according to the testimony of Michael, Donald Johnson came to him, said to him, "I think if you would like to have it you might get the appointment from my father," Judge Johnson, "as trustee of the Central Forging Company because the present trustee has resigned." That, according to Michael, was his first information on this subject, or, indeed, his first information that there was such a concern as the Central Forging Company. So he went down to look it over. Then he went to Judge Johnson and he said to Judge Johnson, according to his testimony, "Donald has sent me to you and has suggested

that you might appoint me trustee of the Central Forging Company."

I wonder if it has occurred to you that if that were not true, if Donald Johnson's name had not been mentioned by Michael

(T. 1384):

when he went to see Judge Johnson, why in the world wasn't Judge Johnson here, why wasn't he on the witness stand here to refute that story? He wasn't here and it is a fair assumption that the reason he wasn't here was because he couldn't testify on that subject in a way to help his son here on trial. There is a circumstance which I hope you will bear in mind.

Now, what happened next? Judge Johnson agreed to appoint Michael, and he did appoint him and it was then up to Michael to secure an attorney. And again, according to the testimony of Michael, Donald Johnson suggested to him that Don Reifsnyder would be a particularly good man for him as attorney; he gave him some reasons, experience, ability, perhaps, and so Michael went to see Reifsnyder. And what did Reifsnyder say? "Yes, I was expecting you, Don Johnson told me you would be coming to see me." And the selection was made.

Then there is another rather significant letter in this file which goes back to the time before Reifsnyder had been appointed, a letter that Mr. Fenner wrote to Mr. Knight. I understand that Mr. Knight had been specially employed on account of his ability, his experience, had been especially employed to represent the Maxi Company and its proprietors, the Longs, Fred Long and Max Long, who were interested in the whole situation. There was the same contro-

versy that had been going on between this faction and that faction, in which the Longs were involved, and Mr. Fenner writes to Mr. Knight on
(T. 1385):
the 7th of January: "Dear Harry, I take it that you have been informed that Judge Johnson has named a new trustee to succeed Walter Compton in the matter of reorganization of the Central Forging Company." And then he goes on to say that he has attempted to contact Judge Johnson. For what purpose? "Because it would be pleasing to Fred and myself," Fred Long, "if you could be in a position to guide the financial movements of the Central Forging Company for reorganization as attorney for the new trustee." It is proposed in this letter by Fenner to Knight that he, Knight, who has this relationship to the Maxi Manufacturing Company, that he should be appointed as attorney for the trustee. Why? So that the Long faction, the Maxi Manufacturing Company, could manipulate any reorganization so that it would be for the benefit of the Maxi Manufacturing Company. That didn't go. Why? Why? Because Donald Johnson wanted to control the trustee and the trustee's attorney and he suggested to Michael, Reifsnyder as the man. And so Reifsnyder was appointed.

When did the conspiracy start? Why, it started back there in 1941. As a matter of fact a conspiracy may start with one man. It started with Donald Johnson and it grew into a conspiracy as soon as there was another person because it takes more than one to conspire. And the conspiracy grew from that time on, and grew with great rapidity.

Now, then, what happened? Michael and Reifsnyder went to

(T. 1386):

Catawissa to look the thing over. I think Michael had been there alone on several occasions alone, perhaps. Then he and Reifsnyder went down there, they had a conference with the Longs to find out—of course they knew about the old attempted reorganization, they found out all the background of this situation and of course their functions were to try and effect a reorganization that would be approved by the creditors. Without such approval no reorganization could go through. So they went down there and the first thing, of course, that the Longs suggested was, "See our attorney, Mr. Knight, at Sunbury." So they went down to Sunbury and sought a conference with Mr. Knight. The record shows that that conference was on the 23rd of January; less than a month after Michael had taken charge as trustee. And they had a long talk about the possibility of the Maxi Company taking over on some basis, taking over the Central Forging Company. And on the 29th of January, in response to his promise, Knight wrote them a letter. Now, this letter has been called to your attention on a number of occasions; it has been read to you at least twice I am sure. I know Mr. Knight read it while he was on the witness stand. I am not going to read it. I am going to direct your attention to a few of the statements contained in this letter where he goes on to make a proposition. This is the opening wedge in a series of conferences which resulted finally, as you know, with Maxi taking over the Central Forging Company.

(T. 1387):

He said that they would pay, the Maxi Company would pay $17,000 for a clear title to the land and plant. And then by some arrangement they would take over the rest

of the assets; which have been referred to time and again here as the loose assets. And he speaks here of the accounting report. He doesn't mention it by name. On the witness stand he stated that the accounting report which he referred to he afterwards learned was the Dobson report as of December 31, 1941.

In connection with taking over these so-called loose assets he said this: "I am informed that while this statement is as of January 1st, 1943," meaning the Dobson report, "that there would be no material difference in the current position from month to month over a period of a few months."

Now, I assume that certainly the gentlemen on this jury know enough about accounting to know what is meant by the "current position," the day to day financial condition of the concern. And the "current position" relates to what are known as cash items, not cash alone but items that are to be reduced to cash in the ordinary course of business. And he says, "I am informed * * * that there would be no material difference in the current position from month to month over a period of a few month." That is, there might be in the next month less inventory, that it would reflect itself in greater receivables; if some of their products went out it would reduce the inventory but whoever bought it would owe for it, it would be an

(T. 1388):

account receivable, so that instead of being inventory it would be a receivable. So that wouldn't change the "current position".

"* * * and the receivables might become less, which would reflect itself in the cash, and cash used to pay the payables, so that the net would remain about the same."

Now that brings me to the statement of Mr. Knight, and particularly the argument made by Mr. Levy about an item of $3,086 and some cents that was owed by the Maxi Company to the Central Forging Company and was listed as of December 31st as part of the receivables. Now they say the Maxi Company paid $3,086 and they couldn't be expected to pay it again in connection with the purchase of the property of the Central Forging Company. That is right in accordance with the statement in this letter and is a perfect absurdity because as soon as the Maxi Company paid that $3,086 it went into the cash of the company, or if it was used to pay—if it was used to pay some of their debts it reduced those debts and meanwhile there would be other receivables accumulating as their property, or their manufactured product was sold. But this concern was being operated all the time, it was being operated, you will note and remember, I am sure, by the Longs, Max Long and Fred Long and Homer Davis. So the mere fact that the Maxi Company paid $3,086 along in January wouldn't change the current position in the least, and the argument of Mr. Levy on that subject falls completely.

(T. 1389):

Now, what else does he say in this letter of the 29th? This first proposal, and he speaks about what the prospects might be in connection with such a plan of purchase as was outlined here, after paying the expenses of the reorganization and whatever obligations there are in connection with litigation, "there would be a few thousand dollars left." Please remember that, "few thousand dollars left." There were a few thousand dollars left, namely, $3,000, and that is the $3,000 that is the subject of this lawsuit.

Now, this proposal of January 29th, as I said before, was the start, and then there followed a succession of conferences working out the details of the plan of reorganization. It was necessary to get the approval of the creditors. And, incidentally, the proposal was made in this January 29th letter, in connection with the plan, of getting the creditors to agree.

"Our calculation is that the amount we would pay in would be sufficient to pay to the bondholders * * * a dividend of 20 per cent, and would leave over 5 to 8 per cent to pay on the unsecured creditors, * * *." They gave them five per cent. If the $3,000 hadn't been embezzled or misappropriated or diverted these unsecured creditors might have got considerably more than five per cent, to say nothing of the stockholders, who were absolutely blacked out of this proposition. And the stockholders represented about $175,000 of investment and, of course, they never got a dime.

(T. 1390):

Now, the conferences went along but the basis of every conference was the position, the financial position of the Central Forging Company as of December 31st, 1941, or January 1st, 1942, as shown by this Dobson report. This Dobson report from the start to the finish of these negotiations, and the conclusion of the negotiations, the final plan, all are based on this Dobson report. The letters, the correspondence, the statements from start to finish agree with the Dobson report. There were some items that were excluded, but excluding the items that eventually were eliminated, the amount which the Maxi Manufacturing Company, through Knight, agreed to pay for these loose assets

was $26,404.53. And that amount agrees with this Dobson report in every respect from start to finish.

Now, these further conferences went on, which involved the necessity of Reifsnyder and Michael trying to get the bondholders and the unsecured creditors to agree. And they had a long conference with Mr. Knight on the 13th of February and after it was over Michael and Reifsnyder drove on to Harrisburg for a conference with Mr. Wickersham, attorney for the bondholders' committee, and some of the bondholders. Now, the record in this case tells just what happened. In the first place they had this long conference at Sunbury with Mr. Knight and they went to Harrisburg, got there in the evening, and this conference in Harrisburg lasted until midnight, about, and then Michael and Reifsnyder drove back from there to Scranton.

(T. 1391):

How far is it, 150 miles or more? Anyway, it was during that ride that some very significant things happened; particularly the conversations that took place between Reifsnyder and Michael while making that drive, and I want to call your attention to the record. I don't want to make any mistake as to what the evidence actually was.

"During the course of this drive—" this was the testimony of Robert Michael, his direct examination. If counsel want to follow me, I start on page 253, at the bottom.

"During the course of this drive from Harrisburg back to Scranton on the 13th day of February, 1942, did you have any conversation with Mr. Reifsnyder which in any wise brought the name of Donald Johnson into the talk?"

And the answer of Robert Michael: "Yes, we did."

There were a lot of objections by counsel and finally, after several pages here, the Court overruled their objections and then came this question:

"Will you state—" this a question to Robert Michael. "Will you state, as best you can remember, the circumstances of that conversation?" On this ride from Harrisburg to Scranton.

"A. Well, the conversation had its beginning due to the fact, while we had been in conference with the Bondholders' Committee in Harrisburg they had signified their

(T. 1392):

willingness to go along on the plan of merger and accept—and turn their bonds in. In other words, on our way back we had largely accomplished what we had set out to do and it looked like, at that time, that merger would go through. There was nothing at that time to stop it, and during this conversation Mr. Reifsnyder said, 'Well, I suppose we have to talk about some way in which we have to take care of Donald Johnson.' And I said (Michael said), 'What do you mean, splitting the fees?' And he said, 'Well, I am not sure whether we have to do that or not. I have in mind another plan which would create a fund aside from the moneys which would be paid over, of course, in the form of allowances by the Court,' and he said, 'We could set up certain funds which would be paid over to a third party and then come back for disbursement to Mr. Johnson.'"

And he said that that was the first he knew, the first intimation that Michael had that Donald Johnson had to be taken care of by the payment of any money.

And then came this question that I asked Michael:

"Now, in regard to this plan that he said he had in mind whereby Donald Johnson might be compensated without it affecting your fees, did he say whether he had discussed that with anyone else?"

And Michael said here on the witness stand:

"Yes, I asked the question of him (of Reifsnyder), (T. 1393):

I said, 'Well, what do you think, will other people go along on it, after all, you are going to have to take other people in on it?' And he said, 'Well—' * * * that he had discussed it with Mr. Knight in his office that morning and that he was agreeable to going along on some proposition."

Knight was willing to go "along on some proposition." That was the 13th of February.

What happened then? Michael was apparently disturbed about that situation, he didn't know whether Johnson knew anything about it so he decided he was going to call him up and find out. So the following Tuesday I think it was, on the 18th of February, Michael called Johnson on long distance; couldn't get him; so he called him the next day, on the 19th, and what occurred? The reason for calling him was to find out whether Donald Johnson understood the manner in which he was to receive any money in connection with this Central Forging Company litigation.

And so this is the testimony, mentioning the 19th of February; my question:

"Did your get him on that date?"

That is, "Did you get him on the telephone?"—no, that's the 18th.

"I didn't get him on the 18th but on the 19th I placed another call and I talked to him. I asked him, in reference to this conversation with Mr. Reifsnyder, (T. 1394):

if he was aware of the plan."

Now, Mr. Margiotti gave some attention to that expression. He says, "Why that doesn't show that Donald Johnson knew anything about the diversion of $3,000 from the trust estate of the Central Forging Company." It couldn't mean anything else, ladies and gentlemen—"aware of the plan." If it had been a mere splitting of fees, which would not have been illegal, it wouldn't have been discussed in that manner, asked if he was "aware of the plan." That implies a lot more than splitting of fees, it implies just exactly what the plan was, something aside from the splitting of fees.

"Well, what did he say?"

Michael said, "He said that he was," that is, aware of the plan, "he was agreeable to it and he thought that that's the way it should be done."

Well, is that the expression of a man who merely expected the split of legal fees? No, its the language of a man who expected to get something through a scheme. And so that was the conversation of the 13th of February

and that was the confirmation of the plan, the truth that Donald Johnson knew of it. It is perfectly clear.

Now, so far as the telephone conversation itself is concerned, it is a matter of record that there was a telephone call from the country club to Donald Johnson's office in Middleburg.

(T. 1395):

As I have said before, if I haven't said it I want to emphasize it, that everything that came to you from this witness stand from Robert Michael is corroborated in some way or other. If the Government hadn't been able to corroborate the testimony of Robert Michael we wouldn't any of us be here today.

Now on this 13th of February there was this long conference with Knight and following it Knight wrote a letter to the Maxi Manufacturing Company on February 17th. Now let's see what he said.

I am trying to get the events that have been presented to this jury, I am trying to get them to you now in their chronological order so that there will be no misunderstanding as to just what occurred.

February 17th, a letter from Knight to the Maxi Manufacturing Company. It says, "I spent all day Friday afternoon from 12 o'clock until 5:45 with Mr. Reifsnyder working out some plan whereby you could take over the Central for a price of $17,000, plus the inventory; except, however, the item of $5,054.21 of supplies." That was eliminated gradually: first that item of $5,054.21 by agreement between Reifsnyder and Knight was cut down to $2,000 because these were supplies, office supplies and factory

supplies, which had been consumed at least in part. S first there was an agreement to cut it down to $2,000 an then they cut it out entirely. And I may have something t say about cutting it out entirely because

(T. 1396):

when they cut out the $2,000 entirely they provided th extra $2,000 for Harry S. Knight so as to make his full fe of $7,500, $5,500 provided by the order of the Court. H had made originally a claim for $7,500, and then he loade it on the Central Forging Company in this other way b cutting down these supply items, cutting them out; firs cutting them down to $2,000, then eliminating them so a to provide that $2,000. But I am not going to stress that although it is clear from the evidence and it simply illus trates, it demonstrates, it emphasizes the fact that in con nection with this transaction under Knight's direction they were loading this estate of Central Forging Company with everything possible. Not only that, they were consenting approving, to the abstraction, to the embezzlement, to the misappropriation of the $3,000. That is the real subject of this case.

Now, further in this letter to Maxi, Knight's letter of the 17th of February, he goes on with a lot of figures and it is perfectly clear from these figures that the net result shows an agreement to take over by the Maxi Manufacturing Company, after some adjustments are made, for $26,404.33. I wish you would remember that amount. It appears without any difference straight through from start to finish.

Now, there is nothing more in that letter except to emphasize the fact that the amount was $26,404.33.

But on the same day, the 17th of February, Reifsnyder (T. 1397):

wrote a letter—they passed each other apparently—wrote a letter to Mr. Knight—no, they didn't pass each other because the Knight letter was sent to his company, Maxi, and the letter of Reifsnyder's was sent to Mr. Knight. In the letter of Mr. Reifsnyder's to Knight the figures are the same again, $26,404.33 for the loose assets. And that's February 17th.

Now, there was continuing discussion of the plan and in every instance, as the evidence emphasizes and demonstrates, the plan was based on the Dobson report and the arrangement was as of January 1st, 1942. Then came Mr. Knight's defense and he said, 'No, this wasn't an agreement as of January 1st, 1942, that's the way he had planned it but Reifsnyder overruled him and in a telephone call on the 24th of February, right after these letters, he said that Reifsnyder said, 'No, we can't have the plan that way, what we will have is your agreement to pay the costs, the allowances to be made by the Court, the expenses of administration, you are to pay that up to $26,404.33.'"

Now, this is a weird proposition on the part of Harry Knight. In the first place the allowances made by the Court must be based upon a report the trustee gives as to the amount of money available. The amount of the allowances by the Court must be considerably less that the cash available, which would mean that there would be money for other than expenses, there would be money for the creditors, perhaps for the poor stock-

(T. 1398);

holders with their $175,000 embezzlements. No commi-

ment could possibly be on the 24th of February when he said Reifsnyder called him up, no commitment could possibly be made which would bind the Court to anything. But there is further proof that this so-called telephone conversation from Reifsnyder didn't happen, further proof in another letter.

On the 11th of March, which is about fifteen days after this pretended telephone call, Homer Davis wrote a letter—no, Fenner wrote a letter to Homer Davis about this plea of reorganization, the fact that the amount had practically been agreed upon, and it was to advise Homer Davis of the amount of money that would be needed to close the deal. This letter of March 11th says, "Following our discussion last evening, to clear our minds as to amount required for final payment in Central Forging reorganization, it looks like $30,754.33." "The figures I got at conference at Mr. Knight's office, the amount we have to pay." Is there any uncertainty about that? This completely negatives the pretended conversation and the pretended change in this plan testified to by Mr. Knight.

Now, let's see about this $30,754.33. First you have to take out the extra $2,000 to Mr. Knight, which brings it down to $28,754.33. Then you have to take out $2,000 of the value of supplies—which was eliminated immediately after that—that brings it down to $26,754.33. And then there was an agreement to cut out a claim against traveling salesmen,

(T. 1399):

advances to traveling salesmen, $350; everybody agreed they never could be collected. You take away the $350 from the $26,754.33 and again you get $26,404.33. And that,

ladies and gentlemen, is fifteen days after Harry Knight said that Reifsnyder called him up and called off this proposal that the scheme should be as of January 1st, 1942. His statement, Knight's statement, and this letter are as inconsistent as any imagination could give.

Again it was all dependent upon the Dobson report, it shows the plan was as of January 1st, it shows the amount $26,404.33. Meanwhile there was the letter of Mr. Knight to Mr. Reifsnyder on the 23rd of February. There is only one thing about that letter that I want to call your attention to, it is a long letter, several pages, four pages in fact, and I want to read you just the last paragraph, this is headed, "Authority to Maxi to create loan": "Work is now in progress to have waivers signed for a stockholders' meeting to increase the loan of the Maxi to fit into the plan." So you see, ladies and gentlemen, that in order to carry through this plan the Maxi Company had to borrow money. Do you think they were giving away, making a present, a gratuity of $3,000 when they had to borrow the money to do it? It is absurd.

Now on February 27th the plan was filed. There is no disagreement on that subject except, of course, as to the details of the character or manner or fact of the fraudulent (T. 1400):

misappropriation. And then after some advertising, which was necessary, it finally got down to the closing, which was on April 24th.

But first: meanwhile on April 8th, and the occurrences of April 8th are perhaps the most significant part of the Government's evidence as far as Harry Knight was concerned because the Government's evidence against Harry

Knight in this indictment comes largely from the mouth of Harry Knight in the contempt proceedings that were held here in this very court room before this very Judge—

Am I right about the court room?

THE COURT: I am not sure myself, Mr. Pratt, we were in so many at the time, back and forth.

MR. PRATT: —so I am going to call your attention to what happened. This is from the record.

There was a distinguished politician in New York that everybody knew of at least, Al Smith. In every speech that I heard him over the radio—I never saw him—he'd say, "Let's look at the record." That is what we are going to do now.

THE COURT: Mr. Pratt, you suggested a recess at 11:30, do you want it now or do you want to go on?

MR. PRATT: I'd just as soon take a little recess now.

THE COURT: All right. I don't want to force it now but you asked for it. I have given the others a recess after an hour's time so I will give you the same thing. We will take

(T. 1401):

ten minutes.

(A short recess was taken.)

MR. PRATT: I was just about to refer to the record before this short recess. I am going first into the record in this case, in the testimony of Michael in connection with this significant meeting at Knight's office on the 8th of April.

The 8th of April is an exceedingly important date in connection with this case.

And so Michael was asked this question:

"Do you have any recollection of a meeting at Mr. Knight's office on the 8th of April, 1942?

"I do, yes.

"Who accompanied you to this meeting?"

And Michael said:

"Donald Reifsnyder and myself went to his office on the 8th * * * we were there quite a little time.

"Up to that time, or at that time had a definite agreement been made as to the exact amount of cash that was to be paid by the Maxi Manufacturing Company in addition to the $17,000 which was to go, eventually, to the bondholders and unsecured creditors?"

And then came some objections that went along for a couple of pages, and he said, Michael said, and right here in this witness chair:

"I think it was on April the 8th at Mr. Knight's (T. 1402):
office that the final amount was determined that was to be paid over by the Maxi Manufacturing Company."

And then the question:

"And in your conversation with Mr. Knight on that occasion did he state the amount which was ultimately to be paid in cash in addition to the $17,000?"

Mind you, Knight has testified that this plan was all changed by this so-called telephone conversation from Reif-

snyder on the 24th of February; now this is April 8th, about six weeks later.

And Michael said:

"Yes, we arrived at a figure that day."

And the amount was $25,982 and some odd cents.

Now, you remember that they had a credit of $421.50 for some insurance or bond premiums they paid, and you add the $421.50 to the $25,982 and again you have $26,404.33. That was the amount agreed to, definitely.

So Michael says, "On the 8th day of April."

And it goes on:

"Now, how long a conference * * * did you have on that occasion?"

"Well, * * * two or three hours. We got there in the middle of the afternoon. As I say, we came to a final figure on the amount that Maxi Manufacturing Company was actually owing to the Central Forging Company,

(T. 1403):

on this deal.

"You mean the amount they were to pay in cash at the closing?

"That's correct." So Michael said. "That was the purpose of that meeting and that was accomplished there."

An exact contradiction of any kind of a claim that there was any change in the plan.

And I want to remark here, just in passing, if there has been a modification of this contract which definitely changed its terms do you think that an astute, experienced law-

yer like Harry S. Knight would have let the matter remain with no record except a telephone call? Not at all, he would have written a letter confirming the telephone conversation or he would have requested Reifsnyder to write a letter confirming the telephone conversation. A smart lawyer doesn't leave an important event of that sort to an unrecorded telephone conversation.

Now, further: Michael says that after being in Mr. Knight's office all afternoon he and Reifsnyder went across to the Edison Hotel, where they had dinner. Michael had left his car for some repairs. Reifsnyder went to Mr. Knight's residence and later Michael picked him up there. He said,

> "I had left the car around the corner, I remember it was my car and there was something wrong with it, I don't remember whether it was a flat tire, but I know we parked

(T. 1404):

> it there and we discussed what we had accomplished that day and also as to the method of paying this $3000 over to us."

And then it was asked again about the conversation in the afternoon:

> "Well, we had a conversation during the afternoon in which it was agreed with Mr. Knight and Mr. Reifsnyder. It was agreed that $3,000 would be made payable to a third party and that money was to come back to us, less certain deductions for income tax purposes."

Now, let me speak a minute about this deduction for income tax purposes. Ultimately you will remember that the check was made payable to Fenner and that he was to deduct

an amount necessary to pay the income tax on the whole $3,000, but Knight says it was a gift. Ladies and gentlemen, Mr. Knight knows that a gift is not taxable in the hands of the recipient of the gift. Any lawyer who has any familiarity with the income tax laws knows that a gift is not taxable in the hands of the recipient. And he says it was a gift.

Another thing about this gift; and I am digressing a little bit from my notes, which I have had to formulate so that this argument would have a logical sequence,—Knight talks about this gift. I have directed your attention to the fact that the Maxi Company had to borrow money to complete this deal, and does anybody think that they are going to borrow money to

(T. 1405):

make a gift of $3,000 to anyone? But it is said, and Knight said it, that he called Homer Davis about it, telling him that, "We are going to make a gift and you will have to get the approval of the 'old man.'" I think he referred to it in that way. Who was the "old man"? Fred Long, Davis' father-in-law, or Max Long, Davis' brother-in-law, and they were the big shots of Maxi Manufacturing Company, and, according to the conversation, Knight said, "We will have to have the approval of the Longs." Has it occurred to you, ladies and gentlemen, that if the Longs knew or approved of any such thing as a gift, why wouldn't they be here on the witness stand in this case to come here to support these contentions, particularly when Fred Long's son-in-law, Max Long's brother-in-law, is here on trial charged with a criminal offense? Isn't it significant that the Longs were not witnesses before you ladies and gentlemen to state to you that this was a gift given with their approval? The fact

that they were not here completely negatives any idea that it was a gift.

Now continuing with this testimony of Michael and the Court. Judge Smith asked a question about at this point, the Court said:

"And you say, further, it was agreed that it would be paid through a third party?" The $3000.

And Michael answered:

"Well, that wasn't definitely established at that particular moment, but after we had dinner, then Mr. Reifsnyder left me and went over to Mr. Knight's home and I was to pick the car up and meet him, which I did, in front of Mr. Knight's home. Mr. Reifsnyder came out and got in the car and we drove home and on the way—" (T. 1406):

There are some interruptions.

"It was approximately, I would say (we were there) a half hour to three-quarters of an hour. And we drove home and while on our way home Mr. Reifsnyder told me that it had been tentatively * * * agreed that Mr. George Fenner, Sr., would be approached for the purpose of receiving the $3,000, which he in turn would turn back to us."

And the Court said again, then:

"'To us,' you mean whom, Mr. Michael?"

And Michael said:

"I don't quite follow you."

And the Judge said:

"You said the $3000 to be paid through a third party but returned 'to us'?"

In answer:

"Don Reifsnyder and Robert Michael."

And again:

"Now after you picked up Mr. Reifsnyder in your car at Mr. Knight's residence did you have any talk with him in regard to what he had said to Mr. Knight or what Mr.

(T. 1407):

Knight had said to him?"

And Michael answered, from this witness chair:

"Yes, he informed me that in his conversation there that they had tentatively agreed, providing Mr. Fenner was willing, that Mr. George Fenner, Sr. would be the logical man to receive the check for $3,000 due to his connection as attorney for the Maxi Manufacturing Company.

"Was anything said as to whether there was an arrangement made by Mr. Knight, or any conversation as to the net amount which that $3,000 check would give to you and Mr. Reifsnyder?"

And his answer:

"No, I don't think that there was any conversation relative as to what would be deducted from the $3,000 due to the fact that we couldn't tell what Mr. Fenner's income tax would have been, that is, what percentage it would have been. That was left sort of an open question."

Again I want to emphasize that this conversation with Knight about this $3,000 and the propriety or necessity of an income tax being considered, shows that the whole assertion of Knight's that it was to be a gift, must be and was absolutely false, because, as I have said before, everybody knows, particularly Harry Knight, that there is no income tax on a gift.

And reference is made again as to how much the deduction would be, and then in this same series of questions to Michael:

(T. 1408):

on the witness stand right here, the situation was cleared up as to how the payment of the $3,000 was to be covered up on the records. He said:

> "Well, it was agreed that due to the fact that accounts receivable, open accounts receivable subject to not being collected in full, that it would be a logical place to take $3,000 off the accounts receivable, which were approximately $24,000. * * * "

Now, the accounts receivable in exact amount, as shown by the Dobson report and by all the correspondence, in complete agreement, was $25,534.50. Those were the accounts receivable. And so the suggestion was made, as indicated by the testimony here of Robert Michael, that they would just chop $3,000 off of that so that this defalcation, this embezzlement, this misappropriation, this theft, if you like, would not be discovered. Knight was just as much a party to that transaction as Michael or Reifsnyder. Homer Davis, knowing the facts, was a party to that transaction. Fenner was a party to that transaction because he was the

intermediary, with full knowledge, the intermediary through whom this $3,000 was to be funneled or channeled.

Now, again in this same set of questions, reference is made to the gross amount, the full amount which the Maxi Company was to pay for these loose assets. Again the figure of $25,982.83, which, adding $421.50 makes $26,404.33 It is on

(T. 1409):

April 8th, weeks after—six weeks after, Knight claims the whole plan had been changed. Now, then, what happened? This proposition of $3,000 was agreed to by Knight, and he agreed, furthermore, that Fenner could be asked to become the intermediary through whom the $3,000 was to be paid. And so there was a letter that he wrote, this letter has been read to you I don't know how many times, I am not going to read it again, I am just going to direct your attention to one or two things, and this is Knight's letter to Homer Davis of April 9th, the day after this scheme was launched or completed, after considerable conversations way back from the 13th of February.

"Last evening about eight o'clock Don Reifsnyder called at my home. He said he and Mr. Michael had had dinner in Sunbury, had talked over in detail the problems which we discussed here for an hour or two about getting the extra money and made a suggestion that it be paid to a lawyer whom he designated, who would render a bill to the Maxi Company, a fictitious bill. Namely that the Maxi Company now pay to the trustee $22,982, being $3,000 less than the amount we calculated, and then later to pay the $3,000 to a lawyer to be designated by Don." That is Don Reifsnyder, who would render a bill so as to cover up a blind, a falsity

cation, who would render a bill and they would arrange then to get this $3,000. "I was not impressed with carrying out this purpose through a stranger"—you remember the name of Donald Johnson had
(T. 1410):
been suggested to Mr. Knight, and he turned that down. —"I was not impressed with carrying out this purpose through a stranger who had no occasion to do business for your plant and knew none of you. I suggested to Don that we would endeavor to protect him"—

"That we would endeavor to protect"—Don Reifsnyder. Protect him from what, ladies and gentlemen? From disclosure, protect him from being caught, from his being found out. What other, what other inference can possibly be made from that expression?

"I suggested to Don that we would endeavor to protect him and that personally I would like to see it done through Mr. Fenner or young George Fenner."

Is it possible that by that sort of suggestion Mr. Knight had in his mind to corrupt this young man, George Fenner, Jr., just starting in probably the practice of law?

"So I said I would like to see it done through Mr. Fenner or young George Fenner. I told him I couldn't talk to Fenner between now and the 17th because I was leaving today and wouldn't be back until the night of the 15th, at least. If you feel,"—now this is addressed to Homer Davis,—"if you feel that you can explain this to Mr. Fenner I would be very glad to have you take it up with him. I will explain it more in detail when I get back."

He was putting, he was putting Homer Davis up against a

(T. 1411):

kind of a tough proposition, asking him to explain to Fenner how it occurred that money was being paid through an intermediary which, in itself, indicates there is something wrong.

Now then, what did Homer Davis do with this letter? He followed the instructions of the attorney for his company, Mr. Knight. He knew it was a crooked deal, because anybody who read the letter would know it was something off-color. So he called Mr. Fenner and asked him to come to Catawissa, and he came, in the evening. You remember Mr. Fenner's testimony about that. He came to Catawissa to Wilkes-Barre in the evening. Homer Davis showed him this letter, the original—this is a carbon copy— up in an upper room where they were alone. Fenner read it and he said, "Under no circumstances will I permit my son to have anything to do with such a proposition as that, nor will I do it myself." A complete appreciation on his part that this was something off-color on the very face of the letter is spelled "fraud," "deception." At the same time a letter came from Reifsnyder dated the same day, April 9th, and this letter was in conformity with their agreement of the day before, that Reifsnyder was to write a letter which was to consummate the blind, so that there would be the appearance of legality by the letter that he was to write. And in writing this letter he carried out the instructions of Knight.

Now then, Michael, on cross-examination by Mr. Levy, had

(T. 1412):

something more to say about this, some very significant statements. Now remember, Michael is on the witness stand under cross-examination by Mr. Levy:

"Will you please tell me," —this is Levy speaking to Michael— "Will you please tell me what it was that you or Mr. Reifsnyder said, either individually or by the direction or concert of each other, to Mr. Knight or Mr. Fenner or any of these gentlemen here charged, as to why you wanted $3,000 that you were not entitled to? What did you tell them you wanted it for?"

What did you (Michael) tell Mr. Knight or Mr. Fenner or any of these defendants? What did you tell them you wanted it for?

"I didn't tell them."

"Q. Well, you got the money (didn't you)?

"A. That's right."

And the further question by Mr. Levy:

"Q. And do you mean to say that there was no reason given but you just simply took the $3,000?"

And his answer, Michael's answer from this stand:

"Oh, no, the money was gotten to give to Donald Johnson."

And Mr. Levy said:

"Oh, please answer the question. What did you tell Mr. Knight or these other men as to why you wanted $3,000

(T. 1413):

you were not entitled to?"

And his answer:

"Why, I didn't tell them anything."

MR. LEVY: What page are you reading from, Mr. Brooks?

MR. PRATT: 492.

And the further question by Mr. Levy:

"And they just voluntarily agreed, then, to give you $3,000?

"A. No, Don Reifsnyder told me that he had felt Mr. Knight out and Mr. Knight was agreeable and thought it should be done, that it was always done in these kind of cases."

What was always done?

MR. LEVY: Mr. Brooks, will you please tell the jury whose cross-examination that was?

MR. PRATT: Have I made a mistake?

MR. LEVY: You said it was me.

MR. PRATT: That is what I thought.

MR. LEVY: You ought to tell the jury the truth about the matter.

MR. LEVY [Mr. Pratt]: Well, if I have made a mistake I will be glad to correct it.

THE COURT: I am sure it was a mistake.

MR. LEVY: So am I.

(T. 1414):

THE COURT: I don't think you ought at this stage to become discriminatory. The use of the word "truth." I don't think Mr. Pratt meant to be mistaken.

MR. PRATT: It was cross-examination. Now if it wasn't Mr. Levy it was one of the other attorneys and which one, I could go back in this record and find out, I suppose.

MR. RICH: Mr. Margiotti.

MR. PRATT: (Continuing) But it was the cross-examination of Robert Michael on this stage.

MR. MARGIOTTI: I think it was probably me.

THE COURT: Mr. Margiotti.

MR. PRATT: I am glad to have that settled.

THE COURT: All right.

MR. MARGIOTTI: And I am not repudiating in bad faith, either; just an honest mistake.

THE COURT: Just to see how mistaken we can be, Mr. Levy insisted on calling Mr. Pratt, "Mr. Brooks."

MR. LEVY: Must I apologize for that, Judge?

THE COURT: No, it is not prejudicial.

MR. PRATT: And this further, the cross-examination, I think. Anyway, it is cross-examination,—oh, yes, Mr. Margiotti. The question was asked here by Mr. Margiotti:

"Well, if he said that and it is on the record, I will withdraw the question."

(T. 1415):

"Q. Is that your answer?"

And then there was a little colloquy between the Court and counsel, and finally the question is repeated by the reporter and Michael said:

"I don't remember that I ever told him. I think Mr. Knight understood what it was for."

And the Court said:

"No, no:"

And Mr. Margiotti:

"I ask that that be stricken out."

The answer was then made:

"Well, in our conversation on April the 8th in Mr. Knight's office it was talked over and understood and—"

"Q. Not what was understood, what was said."

The Court said:

"What was talked over?"

And the witness said, Michael, right from this stand:

"That the money that was to be paid this way was to go to Donald Johnson."

And the question:

"Do you mean to say that that was said on April the 8th in the office of Mr. Knight?"

"A. That is my recollection."

And then the further question:

(T. 1416):

"And that the name of Donald Johnson was mentioned?

"A. I don't know whether Donald Johnson's name was distinctly mentioned."

I give you the whole episode as it came from the wit-

ness stand, and it is for you to determine what occurred on that occasion.

Now then, further, to go into the record. Now I want to go into the record of this contempt case, way back a year ago, a little more, in this court room before his Honor, Judge Smith. And it has been repeatedly said to you, I believe that the Government, instead of relying on the statements of Robert Michael, relies on them only when they are corroborated to some extent. They are corroborated here 100 percent.

Now, here Harry Knight was on the witness stand in this contempt case and he said:

"It was then suggested"—Now this is Mr. Knight speaking: "It was then suggested, possibly by Mr. Reifsnyder, that the amount of the loose assets, inventory and so forth, would be in excess of the amount that would be required to pay the preferred claims, the fees, allowances, administration expenses, and so forth, and whether there couldn't be a separate check made for $3,000 and deducted from the amount of the loose stuff, which was in the neighborhood of twenty-three or twenty-four thousand dollars. The papers will show that. If it is nec-

(T. 1417):

essary I can give it to you. My answer to that was," Knight's answer to Reifsnyder's suggestion and Knight is talking, "My answer to that was it made no difference to me as representing the purchaser how the money was paid, whether it was paid in one or more checks; we had agreed to pay a certain amount and we were willing to pay that certain amount. * * * "

Again, contrast that with his statement that the plan had been changed.

> "* * * we had agreed to pay a certain amount and we were willing to pay that certain amount and my only interest was to receive a proper deed, bill of sale, assignment of accounts, and so forth, vesting absolute title in my clients. As to anything else I wasn't particularly interested."

He wasn't interested in the apparent, obvious, clear misappropriation, embezzlement of $3,000.

And the Court got interested in that kind of a response and he said:

> "Mr. Knight, let me interrupt just a moment. * * * To see if I fully understand this plan or scheme."

I think the Court must have been shocked at this disclosure.

> "The top price which your client was to offer was not altered by the plan in any way?"

(T. 1418):

> "The Witness: Was not what?"

The Court said:

> "Was not altered."

And the witness said, Mr. Knight:

> "That's right."
>
> "Wasn't altered by the plan?"
>
> "That's right."

And the Court again said:

> "The only thing that was altered was the manner of its payment, is that right?"

And the witness said:

"Well, when you speak of plan do you speak of the plan that was filed in reorganization?"

And Judge Smith said:

"No, this scheme, we will call it."

And Mr. Knight said:

"Well, all right. Let's designate it as a scheme."

And the Judge said:

"These negotiations that preceded the plan of reorganization we will term a scheme, and your offer remained the same, as I understand."

And Mr. Knight's reply:

"Absolutely, absolutely."

And Judge Smith said:

"But you were to pay the amount of the offer, less
(T. 1419):
$3,000, into the debtor's estate, we will say, is that correct?"

And the answer of Mr. Knight:

"Give it to Mr. Michael as trustee. . . ."

The Court again:

"The assets were to then suffer by some manner in which you were not interested a proportionate reduction in value, appraised value?"

And the witness, Mr. Knight, said:

"That's right."

Then the Court:

"But the payment was to be made in two checks?"

"That's right."

"One, as you said," — this is the Court, "One, as you said, to be paid to Mr. Michael as the trustee and a second check in the amount of $3,000. Is that right?"

The witness (Mr. Knight):

"That is right."

Can't you see the atmosphere, can't you appreciate these questions and answers between Judge Smith and Knight, shocking disclosures? Was anything said at that time by Mr. Knight that this was a gift? No, nothing said about a gift, a complete admission that he was a party to a crooked deal. And there can be no other inference or construction of that language.

Now, this goes on and on. I am not going to take your (T. 1420):

~~time to go very much more into this record, because it is so~~ completely obvious from the lips of Knight himself that he was a party to a crooked deal involving the misappropriation, the embezzlement of $3,000 of the funds of this bankrupt estate. Complete corroboration, complete corroboration of Michael.

Now, he says it was a gift. A gift? I have talked about that enough. If it were a gift no income tax. If it were a gift where are the Longs? If it were a gift there would be no guilt on anybody's part. Don Reifsnyder has been characterized by Mr. Levy, who knew him, as a brill-

iant young lawyer; if Don Reifsnyder had considered that a gift, if he had any intimation that it was to be regarded as a gift Don Reifsnyder, I believe, might be with his family today.

THE COURT: Is this a good point at which to recess or not?

MR. PRATT: Yes, your Honor, it would be a very good place.

THE COURT: I don't want to cut you off.

MR. PRATT: I think this is a very good stopping place.

THE COURT: All right.

MR. PRATT: And I will take not too much time this afternoon.

THE COURT: All right. Then we shall reconvene at 2:30 promptly. The Court still has some work it must do.

(T. 1421);

MR. MARGIOTTI: At what time?

THE COURT: 2:30. That is two hours from now.

MR. MARGIOTTI: We are to convene at 2:30?

THE COURT: Reconvene.

The jurors may retire.

Noon Recess

Summation by Mr. Pratt

Afternoon Session

MR. PRATT: Now, if the Court please, ladies and gentlemen of the jury: I don't want to unduly protract this argument. It seems to me that we have all been in this court room longer than we would like to be here, and I will cut it just as short as I can. But I have the obligation to the Government to complete the argument. I will make it as brief as I possibly can.

Now, I had got down to the point in my argument in which I had given you a number of quotations from the record and a number of quotations from the testimony of Mr. Knight in the contempt hearing, and I will continue on now very briefly, particularly on one point, and I think this is very important. This still alludes to the meeting of April 8th where this scheme to divert the $3,000 was fully agreed upon and in his testimony before this Court in the contempt hearing, Mr. Knight was asked whether or not at the time of that conference and with reference to the $3,000 item, whether there had been any conversation (T. 1422):

between he and Michael. Mr. Michael said:

"Yes, I have a recollection of saying something to Mr. Michael: Do you want that recollection?"

And the Court, who was interrogating him briefly at that time said:

"Yes, what was it?"

And he went on to say, Mr. Knight said:

"This was during the conversation about the $3,000 being separated and being paid in a separate check, to

all of which I testified this morning. I remember saying to Michael * * * 'You (Michael), are under bond and an officer of the court * * * and it is your responsibility what is done with the money, it isn't mine.' "

What did Mr. Knight mean by that? warning Michael that he, Michael, was under bond as trustee and that his bond would be liable if this money was diverted, this $3,000, in any unlawful way, if he got caught. It was a warning, it was a warning to Michael to be cautious what was said about this $3,000 on the outside because if it was discovered his bond would be liable. Is that the language of a man who has made a gift of $3,000? No, it is just another emphatic piece of evidence from the mouth of Mr. Knight that he knew then, he appreciated then that this was a fraud upon the Court, a fraud upon the estate of the bankrupt. "You are under bond, it is your responsibility.". That's what he said to Michael. I wonder if it occurred to Mr. (T. 1423):

Knight that he, also, was an officer of the court? sworn as an attorney-at-law to uphold the law, to protect the integrity and the functions of the Court. He was under as great or greater obligation to this Court than was Robert Michael.

It has been said here repeatedly that Harry Knight has been for years an important officer of the American Bar Association. Everyone knows, every lawyer knows that the American Bar Association has drafted and promulgated a canon of ethics to which every lawyer is bound. It was the duty of Harry Knight as an officer of this court, it was his duty as an officer of the American Bar Association; it was his duty as a lawyer upon knowing that a diversion of

funds was taking place, it was his obligation to report it to the Court, his obligation was no less than that of Robert Michael's. He warned Michael to "keep his mouth shut" with the consciousness that he Knight, would surely keep his mouth shut. If this was a gift would such a warning have been given to Michael? It would be impossible if, in his mind, he had the slightest notion that a gift was involved. It is impossible that he would have made any such remark as that to Michael. Please do not forget the obligation of a lawyer.

And there is this one more thing in this transcript of his testimony in the contempt hearing, it is the last thing I am going to take, and this question was asked him:

"* * * on April 8th; then, you knew then that moneys

(T. 1424):

were to go from your client's hands into the hands of a man who was not entitled to them, to-wit, one man named Fenner. Did you know that, Mr. Knight?"

And his answer:

"I knew it was proposed to do it that way."

Who proposed to do it that way? Well, he said that Reifsnyder did. Who agreed to doing it that way? He did, and admits it. So I say to you that so far as his guilt in this case is concerned, he admits it. It comes from his own mouth, his guilt as a participant, as an aider and abettor, as a conspirator in connection with the misappropriation, the embezzlement of this money in the unlawful transfer of these receivables.

Now, the next thing that happened after the 8th day of April in connection with these transactions, was that Robert

Michael, as trustee, had to report to the Court what money would be available to the Court in making allowances of fees and expenses in connection with the litigation. And this was filed on April 14th, 1942, which is six days after the 8th of April, and in it Michael reports to the Court, "The figures taken from the report audited by Dobson Accounting Service as follows:—" giving the total of assets and of liabilities and, therefore, the amount available to the Court in making these allowances. He gives the assets at sixty-four thousand odd, the liabilities at forty-one thousand odd, with a balance of $23,404.33. Now, I have been talking time and again about the

(T. 1425):

figure of $26,404.33. This is now $23,404.33. Why? Because the $3,000 was chopped off the accounts receivable and the Court was falsely advised that there was just $23,404.33 instead of $26,404. This is signed "Don Reifsnyder." It was filed in behalf of Michael, Michael knew about it and said on the witness stand that it was intentionally false in order to cover up this $3,000.

Mr. Knight was asked about this and he said he never saw it. Well, that's very convenient. He must have seen it, he was following the procedure in this case to make sure that his client got what it had bought and, of course, he saw this. Now, of course, he saw that that amount of these receivables had been reduced so that the net remaining for the Court's consideration in making allowances was $23,404.33 instead of where it belonged, $26,000.

And in making the report the Court is advised that, "The successor trustee hereby submits a report of the assets to be acquired in the reorganization as aid to the Court."

"As an aid to the Court." The allowances hadn't yet been made, so how could Knight or Fenner or Davis, or anybody else connected with this transaction and required to furnish the money to carry it through, how could they have known what allowances the Court would make? And so the Court did make its allowances, and made them on the 20th day of April, filed on April 20th, 1942. It is a rather long document, making these
(T. 1426):
various allowances, and signed by Albert W. Johnson, United States District Judge, and he makes these various allowances, and at the end says, "This fully exhausts the funds of $23,404.33 available for fees, allowances and expenses as itemized in the report of the trustee."

He was deceived by the trustee and his attorney and by Knight, because Knight obviously knew what was being reported to the Court. And again I say, under his oath as a member of the Bar, under his oath as a member of the Bar of this Court, under his obligation as an officer of the American Bar Association to adhere to its canon of ethics, Harry Knight was obligated to report to the Court that a false document had been submitted, upon which the Court might base its allowances.

Now we get down to the 24th of April, that was the pay-off. I am not going to burden you with many details of what happened at Knight's office on the 24th of April; they were all there,—Fenner, Davis, Knight, Michael, Reifsnyder and Max Long, the president of the Maxi Company. The checks were drawn. The checks aggregated, with the $3,000 payable to Fenner and excluding an extra $2,000 that went to Knight as fees, they aggregated $25,404.33. There was the check for $3,000 payable to Fenner; he was there

and immediately endorsed it and put it back on the table. It was said he objected even then, even then Fenner objected to having a part as intermediary in the transaction. Why? Because he knew it was a crooked deal, he (T. 1427):

knew it was an obvious subterfuge to cover up a payment of $3,000 to be made illegally, and he again objected. But it was said that Mr. Michael made the remark to him, "Well, don't worry. Nobody outside of this room is going to know anything about it." That's a significant answer, isn't it? It is to be a secret. Michael had been warned by Knight to keep it secret, and so the objection stopped when Fenner got $500, that was the end of Fenner's objection to the deal.

There is a conflict as to where he got the $500, whether at Knight's office or at Catawissa. What difference does it make? What difference does it make where he got the money? He got it. And under the assumption the $500 which he got was to reimburse him for the income tax, because he was to make a return of the whole $3,000. But did he do it? No, he did not. Why? On the thought and consideration, I suppose, that he decided, "Well, I didn't get it, why should I return it?" But if he didn't get it why keep the $500? And there is a great question as to whether he ever returned the $500 in his tax return. But it's the clearest evidence that he knew it was a crooked deal; he wouldn't let his son go in, he hesitated himself, objected because of the appearance of this thing which spelled "Fraud." So he took the money and stopped objecting.

Now, they went,—after the checks had been drawn they went down to Catawissa, drove down to the bank. Knight didn't

(T. 1428):

go along because it wasn't necessary for him to go. Fenner and Davis went; Max Long went, as I remember. I don't know whether he actually went to the bank or not. I don't recall. Reifsnyder and Michael were there, and the first and most important thing that occurred at Catawissa was that they took this $3,000 check, which had been made payable to Fenner and which he had endorsed and Mr. Unangst, the cashier of the bank cashed it and laid the money on the table in the directors' room. According to Mr. Michael, Fenner was paid at that time. That left $2,500. Reifsnyder put $500 in his pocket and the other $2,000 was put in the brief case that was being used jointly by Reifsnyder and Michael. That was about all that happened. There was no further objection on the part of Fenner,— he had the money. Davis was present and saw the cash deposited there on the table. In cashing this $3,000 check he knew what it was about. And so then they drove over to Bloomsburg to the golf club over there to find Hervey Smith so that Reifsnyder could give him $500.

Now, there is no criminality, no impropriety, as far as I know, in this matter of handing Hervey Smith $500. It is a mere incident to show that $500 of the money went there. That left $2,000 in the brief case. And so they drove on, took Fenner along home to Wilkes-Barre, and then Michael and Reifsnyder drove the rest of the way from Wilkes-Barre to Scranton, twenty miles, I understand. I further know— members of this

(T. 1429):

jury probably know very well— the highway pavement is a very excellent one and smooth. In the course of that ride

from Wilkes-Barre to Scranton. Michael and Reifsnyder then discussed in detail about giving the money, his proportion of the money to Donald Johnson. And Reifsnyder said, "Johnson expects us to give him one-third of everything that is received in this case, of fees and extra money." The fees were $7,900, the extra money, net, was $2,500, which made something over $10,000, and Johnson therefore expected, so Reifsnyder said, around thirty-three or thirty-four, thirty-five hundred dollars. And there was a considerable discussion and then came the matter of these yellow sheets. It took quite a little figuring. It was said by one or the other of these two men, "Why, we can't give Donald Johnson thirty-three or thirty-four or thirty-five hundred dollars," whatever it was, "because we've got to pay a tax on what we get. He gets his tax free, and if we divide on this basis of a third each, we're going to be terribly stung. We can't do that. Now, let's figure out how we can do it and do it properly and equitably." So Reifsnyder takes out of his brief case the yellow tablet that lawyers habitually use, precisely like this one I have here, and he started figuring and he puts down first the fact that he had a check for $8,420.05, which was the check paid there at Knight's office, payable to Michael personally to cover the fees of himself, Michael, and the fees of Reifsnyder, plus certain ex-

(T. 1430):

penses. Now, they took from the $8,420.05 an item of $50.90, which had been paid, some expenses, I think telephone calls had been made by Reifsnyder, "JDR," and that was to be returned. Of course he was to be given credit for that payment. Now, that left a balance of $8369.15. Then there were other expenses, which it was agreed should

be divided evenly between Reifsnyder and Michael. They divided it equally and it amounted to $469.15. That was taken away and that left the fees of $7,900.

They had both participated in this $500 to Hervey Smith, so they took that away. That left $7,400. That is the net which they had received, net fees from Court order.

Now, they figured that the income tax that they would have to pay on what they got in that manner would be approximately 25 percent, and they figured that out, twenty-five percent means a tax of $1,850; $925 each to Robert Michael and J. D. Reifsnyder. Taking that away from the court order left $5,550. Add to that the $2,500 net from Fenner, left $8050, and split that three ways, $2,683.33 to each, including "DJ" that amount, and of course the same amount to each of the others.

Now, that is a plain statement, a perfectly clear, plain statement of what they were going to do in connection with the split of this money.

Now, it has been suggested in argument, particularly by (T. 1431):

Mr. Margiotti, that that paper could not possibly have been the exact paper that was drafted, written in that automobile on that day, and he points to the fact that his handwriting expert, Nernberg, said that this paper couldn't possibly have been written in a moving vehicle. Well, when you take the rest of this Nernberg testimony, and particularly the cross-examination which Mr. Brooks conducted, I think you would discount anything that Mr. Nernberg said. He was paid $250 to come here and look at these documents, and he would get another $250 if he went on the witness stand. Did

he go on the witness stand? Of course he did—for $250 more. So that the $500, plus expenses, I believe, produced his testimony, first, that this document couldn't have been written in a moving vehicle and, second, that it was impossible in comparing handwriting to compare pencil with ink. Well, the F.B.I. handwriting expert, a man who is probably as good as anybody in the world on the subject, said you can compare pencil and ink writing. But, more significant than the expert Appel, was little Miss Hunter, who hadn't the slightest hesitancy in identifying the handwriting of Mr. Reifsnyder, whether it was in pencil or ink. In fact, she was so impressive in her ability to identify Reifsnyder's handwriting that Mr. Margiotti took her on and accepted her as being able to identify Reifsnyder's handwriting in both pencil and ink. Now, there is no question, of course, not the slightest but (T. 1432):

that this document—there are two pages, there is only part of one of them displayed there (referring to Exhibit G-8-B-E)—there isn't the slightest question in anybody's mind that that was written by Donald Reifsnyder. Mr. Margiotti says, "to DJ," he questioned that. Well, now, look at the word "to," look at the "t"— t-o,— the cross at the bottom. Look at it in any number of the places here in the standard of handwriting and you see the same thing. Now, "DJ" appears in various places on these several documents,— I don't know,— I am not going to examine them any further, but I know it does. Nobody doubts for a minute that that is Donald Reifsnyder's handwriting, and I don't doubt for a minute that it was made in that automobile. In fact, Mr. Appel, the Government handwriting expert of the F. B. I. said that this document was written under less favorable circumstances than the other. So when this man Nernberg

made the statement that that document could not have been written in a moving vehicle he made a statement that was absurd on its face. There are enough irregularities in this handwriting which, taken in connection with your knowledge of the road between Wilkee-Barre and Scranton, to convince me that this is a document that was made in that automobile. Michael said they stopped from time to time; once in a while they would be stopped at a traffic light, perhaps, and they stopped at the side of the road at the street, whatever it was. But there are not irregularities in this paper,

(T. 1433):

there are no indications, there are no characteristics of that document which belie the fact that it was made in that automobile on that night. Now, what does it tell? It tells a story from the lips of Donald Reifsnyder, and you will recall that he called Michael on the telephone from New York. He said, "I am worried; the F.B.I. have got my files and they have got the document showing payment to Donald Johnson. You had better come to New York." So Michael went to New York. Now, what's the answer? The voice of Reifsnyder said, "We made this computation in favor of Donald Johnson, giving him, under this computation, one-third of the net, less our allowance for income taxes, not only from the allowance made by the Court but from the amount that came through this $3,000 check." What could be clearer than that?

Now the next morning it was agreed; the computation shows on one of the pages, it shows just what each one was to get. The recapitulation shows Donald Johnson was to get $2683.34. They gave him the extra cent— they were to

give him the extra cent. That Reifsnyder was to get $3,893.80, which is computed by giving him, first, the $2683.33, then the allowances for the tax of $925; then the fee of $50.90 which he had advanced for something or other, printing, I think, and also he was to be given his half of the other expenses, $234.57. And those all add up to $3893.80. And so the next morning Michael went to him with a check, to Donald Reifsnyder, for

(T. 1434):

$3893.80.

I have told you repeatedly that when we rely on the testimony of Robert Michael we have corroboration. There is the checks which he paid to Reifsnyder, with Reifsnyder's endorsement on it. It went through the bank, it was paid on April 27th, 1942. But when Michael got to Reifsnyder's office in the morning, both of them had been thinking it over during the night, and it was finally agreed that they wouldn't give Donald Johnson $2683.33, they would give him just the $2,500 that came from the $3000 check. Now, how was that paid? All the money that was to come to both of them by the Court's order was included in this check for $8,420.05. Michael had that. The only thing of all their joint funds that Reifsnyder had was the $2,000, the remaining portion of the proceeds of the $3,000 check. But they had to pay $2,500 to Donald Johnson, so Michael was prepared to make up the difference. He gave him $500, so that there would be $2,500 in his hands to pay Donald Johnson. Of course he gave him this check and in addition he had to give Reifsnyder, Reifsnyder's share of the difference between $2,683.33, which first they intended to give Johnson, and the amount they actually did give him of $2,500. The differ-

ence is $183.33, and half of that is $91, and something. So the entire amount that Michael then handed to Reifsnyder was $591 and some cents. That was the end of that. But remember it checks up exactly, item for item, with (T. 1435): these yellow sheets..

Then Michael went home to the country club. It took him some time during the morning there at Reifsnyder's office. He went back to the country club, which I guess is seven or eight miles away, and later in the day he got a telephone call from Donald Johnson. That telephone call is a matter of record. You remember we had the officer of the telephone company here who identified the toll slip from Johnson, with the telephone number of the country club, 371, I think. And Johnson said over the telephone to Michael, "Well, did you close up the Central Forging matter yesterday?" Of course he wouldn't ask any definite question, any more definite than that over the telephone. Michael said, "Yes, okay. See Reifsnyder." That was on Saturday, Saturday afternoon. It was on Friday, the 24th, that they had the payoff there at Knight's office, this was Saturday.

Then Sunday came and on Sunday occurred this conversation at the country club; Johnson came in, Reifsnyder was there, of course Michael was there,—he was the manager of the club,—and sometime during the day, I don't know when, they had a talk about it, about the division of money. Johnson had received $2,500; he said so. But he was being short-changed, he said, about $900; he wanted just what Reifsnyder said the day before, or two days before, he wanted a third of the whole pot. And they argued

that out, the explanation was made in accord-
(T. 1436):
ance with that charge that they would have to pay an income tax and what he got was tax free. He complained, but they told him in no uncertain terms that he had all he was going to get. Reifsnyder said, "Well,"—in effect, he said, "Well: Don, if we have made a mistake, if I have made a mistake in estimating the amount of the tax I will adjust with you when we know for sure. And, if you like, I will write you a letter to that effect and, meanwhile, I will preserve the papers." And here they are, here are the papers.

"Oh," Mr. Margiotti says, "how do we know that those papers are the same papers, that these papers that were found ultimately in the files in Mr. Reifsnyder's office are the same papers?" Miss Hunter said she never saw these papers in the file until the F.B.I. came to get them. But I want to call your attention to the fact that Miss Hunter also said, when originally on the witness stand, that she never paid any attention to Mr. Reifsnyder's papers in his files, particularly in the Central Forging Company matter, because he looked after it himself. Those are the papers, those are the papers which were preserved by Reifsnyder in accordance with his agreement, otherwise he wouldn't have preserved them. Those are the ones that got him into trouble when the F.B.I. found the documents. They were preserved for the benefit of Donald Johnson, and for no other reason.

Now, ladies and gentlemen, that is the end of the trans-
(T. 1437):
action there at that time that the transaction happened. We go now from 1942 to 1944, and in 1944 the F.B.I. and the

Department of Justice, under the direction of Mr. Goldschein, were making an investigation which involved, among other things, the Central Forging Company. And the F.B.I. men interrogated Michael, Donald Johnson, and I don't know who all. They were included, we know, and everybody was worried. They were not only interviewed by F.B.I. men, they were before the Grand Jury time and time again and then it was, as I have already stated, that Reifsnyder called Michael on the telephone from New York and broke the sad news that the F.B.I. had his file with the papers showing payment to Donald Johnson. And then there occurred these various meetings, casual, perhaps, intentional, perhaps, between Johnson and Michael. I have a notion that Johnson was a little suspicious of Michael, was afraid that he might give information which would be harmful. I think there is enough atmosphere in this case to show, what is more, that Johnson had more confidence in Reifsnyder. In all events, there are three rather significant meetings that are shown by the evidence. In the order of their occurrence I am not sure, but perhaps the first of them was when Miller Johnson and Donald Johnson brothers, went out to Clarks Summit by appointment to see Michael. I don't know what occurred, what was said, but the fact that they went there themselves, voluntarily, is significant.

(T. 1438):

Now, what was it next? Well, first in point of time, I think perhaps the next one was the occasion when Donald Johnson went alone out to Clarks Summit. By that time Michael was no longer manager of the country club, but he was in business out there, some woodworking business

Donald Johnson came to his place of business unannounced, alone, and questions were asked, something was said and Michael said, "Let's go over to the hotel and have a drink." So they went to the hotel. And what occurred? Johnson asked, "What's happening in the investigation? What do you know? What are they going to do?" And Michael replied, "The F.B.I. have been looking into my bank account, and I am worried about what you did with the $2500. Can they trace it? Did you deposit it in your bank account?

Johnson replied, "No. Don't worry. They can never trace it."

Isn't that significant, and isn't it probable, likely? Now what is the next one? The next episode was at the Jermyn Hotel, Michael was in there, and in came Johnson. I wouldn't be surprised but what Johnson was looking for him, a likely place to find him. So they sat down together and had their lunch, a sandwich and a glass of beer, perhaps. Michael said, "How are things going in the investigation? Are you up on that?"

Johnson said, "No, I am not up here as a witness on this.

(T. 1439):

trip." And Johnson said further, "What do you hear, Bob?"

Michael said, "I don't know. Not too much, but a lot of action."

Johnson said, "Oh, I don't think they have got a thing."

Michael responded, "Well, I don't know. There is certainly a lot of smoke, if there isn't something."

To which Johnson replied, "Well, they won't be able to prove it anyway, they haven't anything on me."

The reply of Michael to that was, "The hell they haven't."

Johnson said, "Well they can't prove it anyway."

Just then there was some fellow nearby that they got suspicious of, and the conversation stopped.

Now, you take the record as a whole, so far as Donald Johnson is concerned, and to my mind there can't be the slightest doubt but what he started the whole chain of circumstances to get Michael appointed to get Reifsnyder as his attorney, to get fees, straight and crooked, in which he could participate,—the chain of circumstances goes through this record from one end to the other and makes that a settled fact.

Now I am going to recapitulate very briefly and then I am going to close. First as to Knight: Knight has admitted his guilt in his testimony in the other proceeding, the contempt proceeding. His only defense that he has brought here is an absurdity that this was a gift. If is was a gift, why the intermediary? Does a gift have to be sent through intermediate

(T. 1440):

hands? Why? To cover up something. There is no necessity of covering up a gift. None.

Now why the intermediary? If Michael and Reifsnyder were to get the money there would be no necessity of an intermediary, nothing to cover up there, if it is a gift. But if it is a crooked deal and isn't going to Michael and Reifsnyder but is going to Donald Johnson, it must be covered

up by some kind of a subterfuge such as was utilized here. It was not a gift; as I repeatedly said, a gift isn't subject to income tax and every lawyer knows it. So much for that.

Now about Mr. Fenner. He hides behind this gift proposition too, but it is just as absurd in his case. He objected in the first instance, objected in a way which establishes beyond doubt that he knew it was a crooked deal. I don't know whether he knew the money was going to Donald Johnson or not. It makes no difference. If he was a party to the abstraction, the diversion, the misappropriation, the embezzlement; or whatever you want to call it, it matters not whether he knew or did not know that Donald Johnson was to get the money.

Now what about Davis? Well, Davis knew all about it. He knew it was a crooked deal because the letter of Knight told him so. And if it were a gift behind which he could hide that fact would be established by the testimony of his father-in-law and his brother-in-law, but they weren't here, —the Longs.

Donald Johnson? The whole story reeks with his guilt. (T. 1441):

As I have said repeatedly, he started the chain of circumstances that put across this crookedness. And again I repeat that if Michael had not mentioned Donald's name when he went to see Judge Johnson, Judge Johnson would have been on this stand to defend his son.

I am not going to take any more of your time, ladies and gentlemen; the only thing I want to say now is that the importance of this case is very great. Involved here is the protection of the functions of the courts of the United States, particularly in its bankruptcy functions. Involved

here is not only the integrity of the courts, but the integrity of the Bar of this State, the integrity of lawyers generally. That protection we are entitled to here from your lips, a condemnation of what the unscrupulous lawyer will do.

We don't want your verdict to be controlled in any respect by emotion or emotional pleas, all we ask of this jury is that they pass on the facts and, of course, the law as given you by the Court in his charge. All we ask is that you do solemn justice without regard to the individuals, without regard to any emotional consideration.

Mr. Brooks and I have done our job as best we could; we have presented to this jury the facts of the case as we had them. We can do no more, but we ask you now in the exercise of your functions to give to the consideration of the facts the importance which they deserve. We are convinced that these de-

(T. 1442):

fendants are all guilty of the offenses charged against them, but the duty is yours and yours only to pass in finality upon those facts. And I thank you very much.

* * * * * * *

MR. LEVY: We respectfully move the Court at this time to make part of the record the following statements made by Government counsel:

"We don't come here with doubt in our minds, we don't start unless we are convinced that we have a righteous cause to present. We recognize our responsibility and we recognize our duty to the Government of the United States and it is not a light burden, it is not a light burden."

We also ask to make part of the record the following statement made by the Government's counsel at the close of its case:

"Knight has admitted his guilt."

* * * * * * * * *

(T. 1445):

THE COURT: I think any misstatement of fact may be cured by a slight enlargement of certain instructions contemplated by the Court.

There is this to be said about misstatements: I think both sides were guilty of some exaggerations. In fairness to Mr. Pratt, I think the record should reflect that while at times his language may have been slightly intemperate there was nothing in the presentation of his closing argument that would warrant severe criticism.

MR. MARGIOTTI: I didn't mean, Judge, inflammatory.

THE COURT: There were phrases that he used at times that may have been couched in better language, but my understanding of the cases is that this isn't sufficient to warrant a mistrial.

The motion for a mistrial advanced by the defendants is denied, and an exception may be noted.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U.S.D.J.)

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IV.

(T. 1448):

CHARGE OF THE COURT

THE COURT: Ladies and gentlemen of the jury: The indictment in this case consists of three counts, each of which charges the defendants, jointly and severally, with a separate and distinct criminal offense. Each count is in legal effect a separate indictment and will be so considered by you. You will separately determine the guilt or innocence of each defendant on each count of the indictment and, you will return a separate verdict as to each defendant on each count of the indictment. You may find each of the defendants guilty on each of the three counts; you may find each of the defendants not guilty on each of the three counts; or, you may find any one or more of the defendants guilty on any one or more of the three counts, and the others, or other, not guilty on any one or more of the three counts.

The essential allegations of the first and second counts of the indictment follow substantially the pertinent provisions of the statutes under which they are drawn. The offenses charged in these counts, although separate and distinct, are predicated upon the same transaction and necessarily rest on the same evidence. You will, notwithstanding this fact, consider each count separately and appraise the evidence in the light of its particular allegations. You may find upon such an appraisal of the evidence that it is sufficient to sustain

(T. 1449):
both of these counts, or that it is insufficient to sustain either of these counts, or that it is sufficient to sustain the one but insufficient to sustain the other of these counts.

The first count of the indictment charges that the defendant, Michael, as trustee of the Central Forging Company, "knowingly and fraudulently appropriated to his own use" the sum of three thousand dollars "belonging to the estate of" the said debtor "which came into his charge as trustee." This count further charges that the defendants Knight, Fenner, Davis and Johnson knowingly and fraudulently aided, abetted, counseled, induced and procured the commission of the said offense by the defendant Michael.

There is upon the Government the burden to prove beyond a reasonable doubt all of the essential elements of the offense as thus charged. The burden is upon the Government to prove beyond a reasonable doubt: first, that there was received by the defendant Michael, and came into his charge, as trustee of the debtor's estate, the sum of three thousand dollars belonging to the estate of the debtor; second, that the defendant Michael knowingly and fraudulently appropriated these moneys to his own use; and third, that the defendants, Knight, Fenner, Davis and Johnson, or any one or more of them, knowingly and fraudulently aided, abetted, counselled, induced, or procured the commission of this offense by the defendant Michael.

The second count of the indictment charges that the de-
(T. 1450):
fendant Michael, as trustee of the Central Forging Company "knowingly, fraudulently and unlawfully transferred

certain property belonging to the estate of" the said debtor, to-wit, accounts receivable of the value of three thousand dollars, "which came into his charge as trustee." This count, like the first count, further charges that the defendants Knight, Fenner, Davis and Johnson knowingly and fraudulently aided, abetted, counselled, induced and procured the commission of this offense by the defendant Michael.

There is upon the Government the burden to prove beyond a reasonable doubt all of the essential elements of the offense as thus charged. The burden is upon the Government to prove beyond a reasonable doubt: first, that there was received by the defendant Michael, and came into his charge, as trustee of the debtor's estate, certain accounts receivable belonging to the estate of the debtor; second, that the defendant Michael knowingly, fraudulently and unlawfully transferred these accounts receivable, in the amount of three thousand dollars or more; and third, that the defendants Knight, Fenner, Davis and Johnson, or any one or more of them, knowingly and fraudulently aided, abetted, counselled, induced or procured the commission of this offense by the defendant Michael.

The defendants by their pleas of "not guilty," and in fact by the defense here urged by them, deny not only their (T. 1451):
participation in the offenses charged in the first and second counts of the indictment but also the commission by the defendant Michael of the offenses therein charged. They deny all the allegations of these counts, casting upon the Government the burden of proving beyond a reasonable doubt, and

as to each of them, all the elements necessary to the offenses as therein charged.

The defendant Michael has entered a plea of guilty to the first and second counts of the indictment and has thus impliedly, if not expressly, admitted the fraudulent appropriation of the funds of the debtor and the unlawful transfer of its accounts receivable, the basic elements necessary to the offenses charged in the first and second counts, respectively. These admissions, implicit in the plea of the defendant Michael, are not binding upon the other defendants, and do not relieve the Government of the burden of proving these elements as essential elements of the offenses charged in the respective counts.

However, in the application of this instruction in the instant case, you will bear in mind that it does not require the rejection of the testimony of the defendant Michael; this testimony, like the testimony of any other witness, may be considered by you. This testimony, considered and appraised in the light of the other evidence, may be sufficient proof of the basic elements of the offenses charged in the respect-

(T. 1452);

ive counts, provided, of course, you find it credible and of sufficient weight to sustain the heavy burden of proof cast upon the Government:

The first and second counts of the indictment, as you have been heretofore instructed, specifically charge that each of the defendants knowingly and fraudulently aided, abetted, counselled, induced and procured the commission by the defendant Michael of the offenses therein charged.

This is the third element of each of the offenses charged in the respective counts.

There is upon the Government the burden to prove beyond a reasonable doubt, in addition to the other elements of each offense, that each defendant against whom the charge is so made, knowingly aided, abetted, counselled, induced or procured the commission by the defendant Michael of each offense, as charged in the respective counts of the indictment. However, neither proof of mere knowledge of the offense nor proof of mere passive acquiescence in its commission, is sufficient to sustain this burden; there must be proof beyond a reasonable doubt of actual participation in the offense with knowledge. Proof of this element may rest, either on direct evidence, or, as it frequently does, on evidence of facts and circumstances from which actual participation, as an aider and abetter, is the reasonable and logical inference.

The third count of the indictment charges that the de- (T. 1453):
fendants Michael, Knight, Fenner, Davis and Johnson, together with one Reifsnyder, knowingly and unlawfully agreed and conspired to commit the offenses charged in the first and second counts of the indictment. This count further charges that these defendants, in pursuance of the said conspiracy and to effect the objects thereof, did certain overt acts therein enumerated. These overt acts are recited at length in the indictment, and it seems unnecessary to recount them here.

The crime of conspiracy, as charged in this count of the indictment, is defined in the pertinent section of the

Criminal Code as follows: "If two or more persons conspire * * * to commit any offenses against the United States, * * *, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished in the manner therein prescribed.

The crime of conspiracy, as defined in the statute and as charged in this indictment, is a separate and distinct crime. The conspiracy is something apart from and independent of the offenses embraced within its unlawful objects. The essence of the conspiracy is the unlawful agreement among the parties to commit the offenses, attended by the overt act of one or more of them in furtherance of the conspiracy and to effect its unlawful objects. The crime is complete when one of the parties to the conspiracy, pursuant to their unlawful agreement or common understanding, does any act to effect its un-

(T. 1454):

lawful objects; the accomplishment of its unlawful objects is not essential to the crime.

The essential elements of the crime of conspiracy, otherwise stated, are: first, the unlawful combination of two or more persons, pursuant to an unlawful agreement or common understanding, to commit the offenses; and second, the overt act of one or more of them in furtherance of the conspiracy and to effect its objects. There is no crime in the absence of either or both of these elements.

There is no requirement that the agreement be a formal agreement in which the unlawful objects of the conspiracy are explicitly stated. Such a requirement would render

proof of the agreement impossible. It is sufficient that the minds of the parties meet understandingly on their common purpose to commit the offenses. The agreement is usually, if not always, an implied agreement; that is, a mere common understanding among the parties to accomplish by their concerted action, the unlawful objects of the conspiracy. Such an agreement is generally a matter of inference deduced from the acts of the persons accused, done in pursuance of their apparent criminal purpose.

The overt act contemplated by the statute, and necessary to the crime as therein defined, is something apart from the unlawful agreement; it is the independent act of one or more of the parties "to effect the objects of the conspiracy."
(T. 1455);
This act may be either lawful or unlawful, but it must accompany or follow the agreement and must be done in pursuance of the conspiracy and to effect its unlawful objects. The overt act is, in the contemplation of the law, the act of all the parties to the conspiracy, including those who neither participated in it nor had knowledge of it. This rule, however, is limited in its application to those persons who are proved parties to the conspiracy; it has no application to those persons who, without knowledge of the conspiracy, innocently further its unlawful objects by acts otherwise lawful.

Proof of the conspiracy may rest, as it frequently does, on indirect or circumstantial evidence; that is, evidence of related facts and circumstances from which the existence of the conspiracy may be inferred. Evidence of related facts and circumstances from which it clearly appears

as the only reasonable and logical inference, that the overt acts were of such a character and were so connected that they could not have been done except as the result of a preconceived scheme or common understanding, will support a finding that there was a conspiracy.

This does not mean, however, that the mere proof of the overt acts will support such a finding in the absence of further proof tending to support it. There must be proof of related facts and circumstances which, when considered together with the proof of the overt acts, will support the finding.

(T. 1456):

There is upon the Government the burden to prove beyond a reasonable doubt, in addition to the essential elements of the crime, that each defendant against whom the charge is made was a party to the conspiracy. There is, however, no burden upon the Government to prove that each defendant was a party to the conspiracy from its inception. Proof that a defendant became a party to the conspiracy, with full knowledge of it, after its inception and before the accomplishment of its unlawful objects, is sufficient to sustain the charge against such defendant.

There is some evidence from which it appears that the conspiracy, if there was a conspiracy, had its inception with Reifsnyder and the defendant Michael. This evidence, even though you find it sufficient and persuasive as to them, will not sustain the charge against the other defendants, or any one or more of them, in the absence of further evidence that they, or any one or more of them, with knowledge of the conspiracy, became parties to it thereafter.

The third count of the indictment charges each defend-

ant as a principal in the conspiracy. You are instructed that any defendant who, with knowledge of the conspiracy, committed an overt act to effect its unlawful objects, or "aided, abetted, counselled, induced, or procured its commission," may be guilty as a principal, even though he was not a party to the unlawful agreement. Such a defendant, although an aider and

(T. 1457):

abetter, is, in the contemplation of the statute a "principal."

Each defendant is presumed to be innocent of the offenses charged in the respective counts of the indictment. This presumption of innocence remains with each defendant until it is convincingly overcome by credible evidence which satisfies you beyond a reasonable doubt as to his guilt. There is cast upon the Government, as you have been heretofore instructed, the burden to prove beyond a reasonable doubt, and as to each defendant, the essential elements of the offenses charged in the respective counts of the indictment.

The term "reasonable doubt" is a term which is commonly understood but not easily defined. It describes that state of mind which arises when, after a careful and impartial consideration of all the evidence and the inferences of which the evidence is reasonably susceptible, you cannot say you have an abiding conviction to a moral certainty of the truth of the charge. It is not a capricious or fanciful doubt unwarranted by the evidence; but, it is a conscientious misgiving engendered by either the evidence or the lack of evidence.

Therefore, in the application of these principles in the immediate case, if, after a consideration of all the evidence

and the inferences of which the evidence is reasonably susceptible, you are not convinced beyond a reasonable doubt of the guilt of a defendant, you will return a verdict of "not guilty" as to that defendant. However, if after such a consideration

(T. 1458):

of all the evidence and the inferences of which the evidence is reasonably susceptible, you are convinced beyond a reasonable doubt as to the guilt of a defendant you may, as the sole judges of the issues of fact, and in the exercise of your conscientious judgment, return a verdict of "guilty" as to that defendant."

You are instructed that if you find the evidence as to any defendant equally balanced, that is, as consistent with his innocence as with his guilt, you must acquit that defendant.

You are the sole judges of the issues of fact and, therefore, your verdict must be predicated upon the evidence as you recall it. You are not to be influenced in your judgment by either the comments of counsel or the comments of the Court. The comments of either counsel or the Court are not evidential and are therefore without probative value. You will, therefore, give to such comment only such credence as your own recollection of the evidence compels.

This is particularly true of the comments made by the Court during the course of the trial. The Court has on occasions, and in ruling on questions of law which were raised by counsel, commented on pertinent testimony or evidence. This comment, like that of counsel, is not evidential and

has no probative value. You are, therefore, instructed to disregard all comment made by the Court during the course of the
(T. 1459):
trial.

You, as the sole judges of the issues of fact, are likewise the sole judges of the credibility and the weight of the testimony. You will appraise the testimony of each witness in the light of your common experience, and you will accord to such testimony only such credence and weight as, in your conscientious judgment, it seems to demand. You will consider the circumstances under which each witness has testified, his relation to either the Government or the defendant, his interest in the ultimate verdict, his demeanor while on the stand, the extent to which his testimony is contradicted or corraborated, and such other factors as may have influenced his testimony. You may, after such an appraisal of the testimony, and in the exercise of your sound discretion, believe or disbelieve the testimony of any witness either in whole or in part.

These principles are similarly applicable to the testimony of the defendants Knight, Fenner and Johnson, who have testified on their own behalf. You will appraise the testimony of each of these defendants in the light of your common experience, and you will accord to such testimony only such credence and weight as in your conscientious judgment it seems to demand. You are not required to accept as true the testimony of any of these defendants if you find that it is not worthy of credence. You may believe the testimony of any of these defendants, either in whole or in part, even though you find

(T. 1460):

that is not corroborated; or, you may disbelieve the testimony of any of these defendants, either in whole or in part, even though you find that it is uncontradicted. The testimony of a defendant should not be disregarded merely because he is a defendant; his testimony, like the testimony of any other witness, should be considered and appraised.

The Government has called as a witness the defendant Michael, a confessed accomplice. You will scrutinize his testimony with the utmost caution. You will consider the circumstances under which he has testified, his deep personal interest, his admitted hope of leniency, his demeanor on the stand, and such other factors as may have influenced his testimony. You will further consider the extent to which his testimony is either contradicted or corroborated by the testimony of other witnesses, or other evidence.

There is no requirement in the law, however, that the testimony of an accomplice be corroborated. An accomplice is a competent witness, and his testimony, if credible and of sufficient weight, may sustain the conviction of his co-defendants even though uncorroborated. It is for this reason that you must scrutinize such testimony with care and circumspection.

As you have been heretofore instructed, you are the sole judges of the credibility and the weight to be given the testimony of each witness. You may, therefore, after careful scrutiny of the testimony of the defendant Michael, and in the exercise of your sound judgment, believe or disbelieve it either in whole or in part.

(T. 1461):

There is in evidence in this case the testimony of the defendants Knight, Fenner and Davis, given in an earlier trial in which they were called as witnesses. This testimony is reproduced in three transcripts which are here marked as exhibits. This earlier testimony of each of these defendants is not evidential against any other defendant. The admissions therein contained, if any, are evidential only against the defendant who made them and not against any other defendant. You will, therefore, disregard any reference therein which tends to implicate any other defendant. This limitation has no application to the testimony given by the defendants Knight and Fenner in the present trial.

Each of the defendants has offered evidence of his prior good reputation. This evidence must be considered by you, together with the other evidence in the case, in your determination of the guilt or innocence of each defendant. This evidence, when considered together with the other evidence, may create in your minds a reasonable doubt as to the guilt of a defendant; if it does, that defendant is entitled to the benefit of the reasonable doubt thus created and must be acquitted.

Your verdict on the guilt or innocence of any defendant may be reported only if all of you concur in that verdict. Your verdict on the guilt or innocence of any defendant must reflect your unanimous opinion, the independent judgment of each juror.

(T. 1462):

Each juror should give to the opinions of his fellow jurors careful consideration and due deference; but, no juror

should yield a conscientious conviction, based upon the evidence, or the lack of evidence, merely for the purpose of reaching a verdict.

You are instructed, however, that you are not required to reach a verdict. A verdict is the desired result but it is not, under the law, the required result. You may decide, after due deliberation, that you are in substantial agreement and unable to reach a verdict. You may, if you so decide, report your decision to the Court.

You will be permitted to take the indictment with you to the jury room but only for the purpose of guiding you in your deliberations as to the charges. The indictment contains only the charges made against the defendants; it is not evidential and is without probative value. You must not predicate any finding on the allegations therein set forth.

MR. MARGIOTTI: Your Honor, you misread the word "disagreement." You read the word "agreement" instead of "disagreement" under 37.

THE COURT: Well, I will read it again so there will be no misunderstanding.

You are instructed, however, that you are not required to reach a verdict. A verdict is the desired result but it is not, under the law, the required result. You may decide, after due deliberation, that you are in substantial disagreement and unable to reach a verdict. You may, if you so decide, report your decision to the Court. (T. 1463)

The defendant Johnson has submitted certain requests for instructions. I have taken the liberty of rephrasing

these instructions so as to make them conform to the main instructions heretofore given. These instructions, although they originate with the defendant Johnson, are an integral part of the main instructions of the Court and must, therefore, be followed by you.

If you find that the defendant Michael has sworn falsely as to any material fact in the case, you may disregard his entire testimony except wherein it is corroborated; and, if you disregard this testimony you must find the defendant Johnson not guilty.

Before you can convict the defendant Johnson of any crime charged in the indictment, you must be satisfied beyond a reasonable doubt that with knowledge he participated in the crime or crimes charged, and said knowledge must be knowledge of the full crime and not of some collateral fact, otherwise your verdict must be not guilty.

If you find that the defendant Johnson did receive some money from Reifsnyder but that he received it as his share in a fee-splitting arrangement without knowledge that any part of it came from the misappropriation of $3,000, then your

(T. 1464):

verdict must be not guilty.

Before the defendant Johnson can be convicted under this indictment, the jury must find beyond a reasonable doubt that he did receive a part of the misappropriated $3,000 and that he knew that the said $3,000 was criminally secured by Reifsnyder and Michael, and participated therein, otherwise your verdict must be not guilty.

Unless the jury finds that the two yellow sheets, Exhibits G-8-B and G-8-C, were written by Reifsnyder on April 24, 1942 in an automobile while riding from Wilkes-Barre to Scranton, they must be entirely disregarded and are not to be considered by the jury in reaching its verdict.

The defendant Davis has likewise submitted a request for instructions. I have taken the liberty of rephrasing these instructions so as to make them conform to the main instructions heretofore given. These instructions, although they originate with the defendant Davis, are an integral part of the main instructions of the Court and must, therefore, be followed by you.

If you find that the defendant Davis had no personal knowledge of the offenses with which he is charged, and that in good faith he relied upon the advice of his attorneys, you must find him not guilty.

There has been some objection made by counsel for the defendants to certain remarks made by Mr. Pratt dur- (T. 1465):
ing his closing argument. It is the contention of counsel that these remarks do not conform to the evidence in the case. You are instructed to disregard the comments made by counsel for the Government and the comments made by counsel for the defense if their comments do not conform to the evidence as you recall it. Comments made by counsel, as I have heretofore told you, are not evidence and should not be regarded unless they conform to the evidence as you recall it.

Any exceptions, gentlemen?

MR. MARGIOTTI: If your Honor please, I assume that we will have an exception to the original points requested?

THE COURT: Well, yes, Mr. Margiotti, but in your case I think I have covered most of them.

MR. MARGIOTTI: You have, you have covered everything. I mean the first four on the directed verdict.

THE COURT: Yes, I will do that when the jury retires.

MR. MARGIOTTI: I have no exception.

MR. LEVY: We just require a general exception, if your Honor please.

THE COURT: A general exception doesn't seem to do any good. I don't know what that is. A general exception doesn't point out to me where I have erred. You

(T. 1466):

may have it noted on the record for anything you may gather from it.

MR. LEVY: All right.

(Which exception is hereby allowed and sealed accordingly.

(Sealed) U.S.D.J.

THE COURT: The alternates may be excused.

(Two alternate jurors were excused.)

THE COURT: The bailiffs may be sworn.

(Two bailiffs were sworn.)

THE COURT: Now, ladies and gentlemen of the jury, we have prepared for you a form of verdict which conforms substantially to the instructions of the Court, when you have reached a verdict you will enter that verdict in the appropriate blank provided in the form.

You can look at this form, gentlemen, if you want, and see if you have any objection.

MR. MARGIOTTI: I haven't any.

THE COURT: I prepared it with the thought that they cannot be misguided.

(The document referred to is handed to defense counsel.)

THE COURT: Is there any objection to that form?

MR. LEVY: No.

THE COURT: Ladies and gentlemen of the jury, there

(T. 1467):

is this parting admonition: I want to mention to you you will, during the next twelve or eighteen hours or more, be in the custody of two bailiffs; you will discuss this case only in the room which is provided for you. This admonition is made because it may be necessary to send you out to the the hotel for your meals. You are warned that under no circumstances are you to discuss any phase of this case anywhere but in that jury room. It may become necessary to send you to the hotel tonight to sleep. When you leave the jury room your discussions of the case must end, to be resumed only when you return tomorrow morning to the

jury room. You must follow these instructions to the letter because at this stage of the proceedings your failure to follow them may easily lead to a mistrial and that would mean the entire four weeks of trial have gone completely to waste and we would have to start all over again.

If, during the course of your deliberations, you require further instructions, your foreman will prepare the question in written form, submit it to the bailiff, who will present it to me. When I am prepared to instruct you, I will send for you.

The jurors may retire.

* * * * * * * * *

EXCEPTIONS ON BEHALF OF APPELLANT KNIGHT TO CHARGE OF THE COURT

(T. 1446):

MR. LEVY: There is only one thing I would like to say because the Court suggested that, and in view of Mr. Pratt's remark I want to say, there the Court has failed in its charge to the jury to say anything—

THE COURT: The Court hasn't charged the jury. If you have a request—

MR. LEVY: No, no, I haven't.

THE COURT: —couch it.

MR. LEVY: I wanted to get this thing in, because we already have this thing and I want the Court in advance to get it. We except to the failure of the Court to charge the jury relating to the legal force and ef-

fect of the plan of reorganization proven in this case as finally accepted by the bondholders and creditors, and confirmed by the Court, and consummated in accordance with the final decree of the Court; the Court hasn't mentioned a word about that in his charge, and this failure being more prejudicial in view of the misstatement of the law under Chapter 10 by counsel for the Government in his closing argument to the jury, which is now made a part of the record. He said to the jury that under the plan of reorganization there was $175,000 worth of stockholders; to be truthful, it was the Longs and Beckleys who were the stockholders, and they never got a nickel,

(T. 1447):

and that that money could have gone to them, that that money could have gone to the creditors. And I say that under the plan of reorganization in this case, as accepted by the creditors, that money could not have gone to anybody else but the Maxi Manufacturing Company.

THE COURT: Well, let the record reflect that this exception to the Court's charge was made in advance of its delivery. The counsel for the defense at no time submitted an appropriate request embracing the matters which he now calls to the Court's attention at this late stage.

V.

VERDICT

(Filed Nov. 10, 1945)

First Count: Homer N. Davis and Donald M. Johnson, Not Guilty.

George L. Fenner, Sr. and Harry S. Knight, Guilty.

Second Count: Homer N. Davis and Donald M. Johnson, Not Guilty.

George L. Fenner, Sr. and Harry S. Knight, Guilty.

Third Count: Homer N. Davis and Donald M. Johnson, Not Guilty.

George L. Fenner, Sr. and Harry S. Knight, Guilty.

VI.

MOTIONS IN ARREST OF JUDGMENT AND FOR NEW TRIAL

(Filed Dec. 11, 1945).

[These motions are on file with the rest of the record.]

VII.

OPINION

(Filed May 6, 1947)

Ganey, J. (Specially Presiding):

This is a motion in arrest of judgment and for a new trial.

The indictment under which the defendants were tried contained three counts, the first two of which were laid under Section 29(a) of the Bankruptcy Act [1], and the third charged the defendants with conspiracy [2] to commit the offense constituted in Section 29(a) of the Bankruptcy Act. At the trial of the cause of the action, Robert Michael entered a plea of guilty, Donald Johnson and Homer Davis

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1. "A person shall be punished by imprisonment for a period not to exceed five years or by a fine of not more than $5,000, or both, upon conviction of the offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent, or unlawfully transferred any property or secreted or destroyed any document belonging to the estate of a bankrupt which came into his charge as trustee, receiver, custodian, marshal, or other officer of the court." Act of July 1, 1898, c. 541, Sec. 29, 30 Stat. 554, as amended, 11 U.S.C.A. Section 52(a).

2. Sec. 37 of the Criminal Code, 18 U.S.C.A. Sec. 86 provides:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both".

were acquitted on all three counts and Harry S. Knight and George L. Fenner were found guilty on all three counts. The trial was a lengthy one, consuming eighteen and one-half days and involving a record of more than three volumes, consisting of more than fifteen hundred typewritten pages. As a basis for their motions, the defendants list fifty-one assignments of error, which may be conveniently condensed under nine major points. Under the first three thereof, there may be cited the court's denial of the following: (1) A demurrer raising the question whether the indictment stated sufficient facts to constitute an offense against the United States; (2) their pleas in abatement of a defense raising the statute of limitations, and their motions to quash the indictment, raising the question of whether it was founded on evidence obtained in violation of defendants' constitutional rights; and (3) their motions for bill of particulars. These questions were argued before the Trial Judge upon written briefs prior to the trial of the case. With respect to them, no additional comment will be made, except to state that after due consideration, this court is in accord with the Trial Judge's rulings thereon, and therefore the remainder of this opinion—the remaining six points—will be restricted to the determination of whether there has been any error committed at the trial of the cause, and if so, to determine whether the substantial rights of the defendants have been prejudicially affected thereby, necessitating the granting of a new trial.

Briefly the facts herein involved are as follows: On August 5, 1938, George L. Fenner, Sr., one of the defendants herein, and F. Max Long, represented by Harry S. Knight, as counsel, another defendant herein, were petitioning cred-

itors of the insolvent Central Forging Company (hereinafter referred to as Central) under what was then known as section 77B of the Bankruptcy Act. Walter N. Compton was appointed Trustee and upon his resignation on December 27, 1941, Robert Michael, one of the defendants herein, was appointed Successor Trustee. On January 23, 1942 due to the fact that a plan of reorganization had previously failed of approval, and that the operation of the business of Central, which was hopelessly insolvent was proceeding unsatisfactorily, Michael accompanied by J. Donald Reifsnyder, now deceased, an attorney of Scranton, called on Defendant Knight at his office in Sunbury, at which meeting the possibility of a new plan of reorganization which would involve the merging or purchasing of Central with or by the Maxi Company was discussed, inasmuch as has been indicated Knight had represented the petitioning creditors and was also special attorney for the Maxi Company. On the following day, Reifsnyder was appointed attorney for the defendant Michael. On January 29, 1942 Knight wrote a letter to Reifsnyder in which an offer on behalf of the Maxi Company was made for the purchase of Central including fixtures and current assets, excepting cash, accounts receivable, parts in process, finished products and raw material for Seventeen Thousand Dollars ($17,000.00). In addition the Maxi Company was to relinquish its claim to participate on the dividends on Central Bonds. From Knight's calculations from the figures given him by Defendant Davis, the current net worth of the assets, excepting the Seventeen Thousand Dollars ($17,000.00) was Twenty-nine Thousand, Four Hundred Twenty-three and 11/100 Dollars ($29,423.11). It was stated by Knight that while this offer was based on a statement as of January 1, 1942, there would be

no material difference in the current position from month to month over a few months for while there might be a difference in the inventory in one month, it would reflect itself in the cash, so that the net would remain about the same. The letter further provided that if the offer was accepted, Central would continue to operate as theretofore until the Maxi Company would take over the plant, the details of which were to be worked out between the Trustee and Maxi Company and which would be embodied in the plan which would be submitted to the parties in interest at the proper time. On February 13, 1942, Michael and Reifsnyder called at Knight's office in Sunbury and an agreement was reached and a plan proposed with respect to Central, which all agreed upon. The proposed plan called for the Maxi Company to purchase the plant and inventory (except an item of supply valued at Five Thousand Fifty Four and 21/100 Dollars ($5,054.21) of Central for Seventeen Thousand Dollars ($17,000.00) and in addition it would receive and pay for the accounts receivable and other assets valued at Twenty six Thousand Four Hundred Four and 33/100 Dollars ($26,404.33). The plan provided further that if it was accepted by the parties in interest, the Maxi Company would take over Central as of January 1, 1942 together with all the accretions therefrom. On the following day, Michael and Reifsnyder went to Harrisburg and presented the plan to the Bondholders Protective Committee who signified their willingness to go along with it and on the following morning while Michael and Reifsnyder were returning by automobile to Scranton, Reifsnyder mentioned the matter of "taking care" of Johnson, one of the defendants herein, without having to share their fees with him. It was suggested by Reifsnyder that sometime prior to the trans-

fer of Central to the Maxi Company, Knight should be requested to have the Maxi Company make a separate check for Three Thousand Dollars ($3,000) payable to some third person, who would endorse the check and give it to them and that in order to make it appear that the payment was not included in the purchase price for Central, the book value of the accounts receivable would be arbitrarily reduced by Three Thousand Dollars ($3,000.00). There followed certain rough drafts of a proposed plan between Reifsnyder and Knight and on February 27, 1942 Michael filed his "Proposal of Revised Plan of Reorganization" with the Court. The plan was identical form and substance as a proposed plan submitted by Reifsnyder, except that Paragraph Five which called for the merging of Central with the Maxi Company did not state that the transfer of the assets would be as of January 1, 1942. The Court set March 16, 1942 as the date for hearing objections to the plan and directed that a copy of it be sent to each creditor, and fixed April 1, 1942 as the last day for accepting said plan in writing. On April 8, 1942, Michael and Reifsnyder again called on Knight at his office in Sunbury when the scheme was suggested to Knight that out of the purchase price which was to be paid by Maxi Company for Central, a separate check should be made for Three Thousand Dollars ($3,000.00), payable to some attorney who could on the surface justify receiving the payment and be in turn could endorse the check and transfer it to Michael and Reifsnyder, thereby compensating Johnson. In order to camouflage the fact that Three Thousand Dollars ($3,000.00) of the purchase price for the assets of Central was to be diverted from payment through the Court, it was agreed that although the Maxi Company would adhere to the arrangement to pay Twenty

Six Thousand, Four Hundred Four and 33/100 Dollars ($26,404.33), this amount was to be reduced by Three Thousand Dollars ($3,000.00) in the Trustee's reports which would be filed with the Court, and in a like manner, the value of the Accounts Receivable listed in the Dobson Report as Twenty Three Thousand, Five Hundred Thirty Four and 50/100 Dollars ($23,534.50) was to suffer a reduction of Three Thousand Dollars ($3,000.00). Knight made no objections to this scheme and stated that since the Maxi Company had agreed to pay Twenty six Thousand, Four Hundred Four and 33/100 Dollars ($26,404.33), in addition to the Seventeen Thousand Dollars ($17,000.00), it made no difference to him or the Maxi Company how it paid the money as long at it did not exceed that agreed upon by his client. It was further agreed between them that the defendant Fenner would make a good intermediary to whom the Three Thousand Dollars ($3,000.00) would be paid, and by letter dated April 9, 1942 to the Defendant Davis, Knight went over the conferences which he, Reifsnyder and Michael had at his home with respect to the Three Thousand Dollars ($3,000.00), and suggested that in view of the fact that he was going to be away, that he, Davis, contact Fenner and take the matter up with him. On the same day, April 9th, Reifsnyder wrote a letter to the Defendant Knight in which he suggested a flat allowance of Three Thousand Dollars ($3,000.00) for collection of accounts receivable would be a proper way to account for the deduction and consequently Three Thousand Dollars ($3,000.00) was to be deducted from the purchase price which the Maxi Company was to pay for Central. On April 10, 1942, Defendant Davis discussed the matter with Fenner but was unable to persuade him to accept the role. However in a later conversation with Reif-

snyder, Feiner agreed to be the intermediary with respect to the Three Thousand Dollar ($3,000.00) check.

On April 14, 1942, Michael filed his report, wherein he recited that the revised plan had been approved by the requisite number of creditors, and that as an aid to the Court in fixing the amount of fees to be allowed by it, he was submitting a report of the assets of Central and the money to be acquired for them, stating that the figures submitted were taken from the report compiled by Dobson Accounting Service of Scranton and listed the value of the accounts receivable as being Twenty Thousand Five Hundred Thirty Four and 50/100 Dollars ($20,534.50). He further stated that the total amount subject to the Court's order was Twenty Three Thousand Four Hundred Four and 33/100 Dollars ($23,404.33), whereas if no reduction had been made in the accounts receivable, this amount would have been increased by Three Thousand Dollars ($3,000.00), and would have read Twenty Six Thousand Four Hundred Four and 33/100 Dollars ($26,404.33).

On April 17, 1942, the revised plan of reorganization was confirmed by the Court and on April 20, 1942, the Court entered an order, designated as "Order on Fees and Allowances Requested in Confirmation of the Revised Plan of Reorganization", which totaled Twenty Three Thousand Four Hundred Four and 33/100 Dollars ($23,404.33), the amount reported in the Trustee's report as being available for that purpose. The order stated that the fund was completely exhausted by the payments therein indicated, and those not therein considered were excluded from seeking allowances at any future time. On April 24, 1942 at Knight's office in Sunbury arrangements were made for the merger of Central

with the Maxi Company, and in attendance were Defendant Michael, Reifsnyder and Defendant Knight. Michael and Reifsnyder drove from Scranton and picked up Fenner at Wilkes Barre, leaving him out at Catawissa, but enroute held a discussion concerning the payment of the income tax by Fenner on the Three Thousand Dollar ($3,000) check he was to receive. Later, Fenner together with Davis and Max Long arrived at Knight's office at Sunbury and with Michael and Reifsnyder present, the necessary papers were filled out providing for the transfer of Central's assets to Maxi Company. The Three Thousand Dollar ($3,000.00) check was handed to Fenner, who immediately endorsed it and handed it to either Michael or Reifsnyder. At the close of the meeting, Michael, Reifsnyder, Fenner and Davis drove back to Catawissa where they met in the directors' room of the Catawissa National Bank and the Three Thousand Dollar ($3,000.00) check was cashed. Reifsnyder put Five Hundred Dollars ($500.00) in his pocket, paid Fenner Five Hundred Dollars ($500.00) and put the remaining Two Thousand Dollars ($2,000.00) in a brief case used jointly by himself and Michael. Michael, Reifsnyder and Fenner left Catawissa and stopped at the Bloomsburg Country Club where Reifsnyder paid one Smith Five Hundred Dollars ($500.00) for his part in connection with the Bondholders Committee and drove on to Wilkes-Barre where Fenner was let out at his home and Michael and Reifsnyder continued on to Scranton. During this part of the trip, Reifsnyder brought up the question of the payment to the Defendant Johnson, stating that Johnson expected one-third of the total of their fees, which amounted to Ten Thousand Four Hundred Dollars ($10,400.00). It was further suggested that they would have to pay an income tax on their share

whereas the money to be paid to Defendant Johnson would be covered up and Reifsnyder took out of his brief case some yellow paper and made some notations in connection with the income tax on their fees and arrived at a figure of Three Thousand Eight Hundred Ninety Three and 80/100 Dollars ($3,893.80) as being due to both he and Michael. Michael also agreed to bring Five Hundred Dollars ($500.00) in cash the next day which was to be added to the Two Thousand Dollars ($2,000.00) held by Reifsnyder and which was to be paid to Defendant Johnson. On April 26, 1942, Michael, Reifsnyder and Johnson met at the Scranton Country Club and Reifsnyder gave Johnson Two Thousand Five Hundred Dollars ($2,500.00) in cash in the presence of Michael, and while Johnson complained of the amount, when the income tax feature was explained to him, he acquiesced. On July 9, 1943, Michael filed his First and Final Account as Successor Trustee.

One of the principal errors alleged and considered under the fourth point is that the evidence does not support the charge in the indictment. Under this heading, the defendants contend that the indictment alleged one plan of reorganization, but the prosecution proved another at the trial. According to their contention, the plan stated in the indictment means the official plan as filed with and confirmed by the Court, and that at the trial, the government proved the existence of an entirely different plan outside of and in addition to the official plan. However, it seems to the Court that the plan proved at the trial is the same one alleged in the indictment. Defendants' error lies in their interpretation of the words "plan of reorganization", which they interpret to mean the official plan, whereas the only reason-

able interpretation of the words "under what was then designated a plan of reorganization" in the indictment means a plan different from that of the official plan, and accordingly there has been no variance. In support of their contention, the defendants show that the official plan was carried out to the letter, and that every dollar stated therein was accounted for by the Trustee; and for the government to show another plan would be collateral attack upon a definitive order of the Court. However, the government made no attempt to attack or set aside the order of the Bankruptcy Court confirming the plan or did it make any attempt to show that the purchase price for the assets of Central was inadequate. Further the questions raised in this case were not raised in the reorganization proceedings. Myers et al. v. International Trust Co., 263 U. S. 64; Woodman v. United States, 30 F. (2d) 482, and in addition "The proceedings in the bankruptcy court are not res adjudicata in the criminal court, for the parties are not identical". Douchan v. United States, 136 F. (2d) 144, 145.

It was not necessary for the Government to show that on the date of the transfer of the assets of Central to the Maxi Company that there were in existence a certain amount of accounts receivable. All the government need have shown was that there were assets listed as having a certain value; that a certain amount was offered and paid for these assets, and that the amount was greater than the amount listed in the Trustee's report and filed with the court. At the trial the government showed by the Dobson Report that as of December 31, 1941, the assets of Central had a certain value; that the Maxi Company made an offer of Twenty Six Thousand Four Hundred Four and 33/100

Dollars ($26,404.33) (plus Seventeen Thousand Dollars ($17,000.00)) for these assets; that on April 24, 1942, these assets were transferred to the Maxi Company for Twenty Six Thousand Four Hundred Four and 33/100 Dollars ($26,404.33) (plus Seventeen Thousand Dollars ($17,000.00)); that of this amount only Twenty Three Thousand Four Hundred Four and 33/100 Dollars ($23,404.33) (plus Seventeen Thousand Dollars ($17,000.00)) was accounted for by Michael, who received Three Thousand Dollars ($3,000.00); the difference between the two amounts; that this difference was concealed by Michael, by a reduction of the value of an item of the assets of Central, namely accounts receivable, in the reports filed by him with the Court. If at the trial, the government showed that some amount, whether it represented accounts receivable or some other specific asset, was reduced in value to cover up the discrepancy in the price paid and the amount accounted for to the Court, it was sufficient. As for the Three Thousand Dollars ($3,000.00), it is conceded that prior to its payment to Michael, it belonged to and was the fund of the Maxi Company, yet when paid over to Michael, he should have accounted for this amount in his reports to the Court, for this amount belonged to the estate. It was received in exchange for assets of the estate of Central which came into Michael's charge as trustee. It is futile to argue that merely because Michael in accordance with a prearranged plan, received the Three Thousand Dollars ($3,000.00) in his individual capacity, the Three Thousand Dollars ($3,000.00) never came into his charge as Trustee.

The fifth point concerns itself with prejudicial testimony which was allegedly wrongfully admitted into

evidence. In the trial of the case, objection was raised
the introduction into evidence of testimony of Knig
Fenner and Davis during a certain contempt proceedi
brought against Michael during the latter part of Septe
ber, 1944. This testimony revealed the circumstances su
rounding the alleged scheme whereby Three Thousa
Dollars ($3,000.00) was diverted from the Central esta
and contained statements of Reifsnyder and other defen
ants made in the absence of one or more of them. If the
statements were admitted into evidence against all the d
fendants, they would prove or tend to prove that the d
fendants were guilty of the crimes charged against the
It was emphatically brought to the Jury's attention by t
prosecution and the Trial Court that these excerpts we
being introduced as admissions only against the respecti
person who made them and the Trial Judge further ad
monished the jury that it should disregard this testimon
if the conspiracy were not proved during the progress
the trial. The transcripts were offered as admissions, an
there can be no question that admissions voluntarily mad
by the accused, after being advised of his constitutiona
privilege, as a witness before a grand jury or other pro
ceeding, is admissible against him in a criminal trial
which he is the defendant. United States v. Sager, et a
49 F. (2d) 725, 729; Needy v. United States, 144 F. (2d
519. Further while the testimony of Knight, Fenner an
Davis given at the contempt proceeding was interrelate
and interdependent, that was a risk which the defendant
must take. The instructions given by the Trial Court t
the jury adequately protected, as far as the law allows, th
rights of the defendants. Glasser v. United States, 31
U. S. 60, 81; United States v. Alfano, 152 F. (2d) 30

gain their admission prior to the establishment of the rpus delicti is not a matter for complaint for the order proof is within the sound discretion of the Trial Judge. ohen et al. v. United States, 157 F. 651; Tingle v. United tates, 38 F. (2d) 573; Brastelien et al. v. United States, 7 F. (2d) 888. Further any error or prejudice re. ulting from their admittance was cured when the de- ndants took the stand and testified as to all matters erein, and in so doing, failed to deny or contradict, ex- pt in some minor particulars, the facts brought out by e admissions. Lewis et al. v. United States, 38 F. 2d) 406. Likewise, the fact that Michael admitted that e testimony given by him before the Grand Jury which onflicted with that given by him at the trial was false; at he had pleaded guilty to the indictment and had some ope that the court, in imposing sentence, would be lenient, d not render his testimony incompetent, but its credi- lity and the weight to be given to it, was for the jury. nited States v. Margolis, 138 F. (2d) 1002, 1004; United tates v. Levy, 153 F. (2d) 995. Objection was made to e admission of Michael's testimony of certain conversa- ons he had with Reifsnyder, who had died previous to e trial. However, the death of a co-conspirator will not nder inadmissible statements made by him during and furtherance of the conspiracy. Delaney v. United States, 3 U. S. 586, 590; Lewis v. United States, supra. Further rror is cited in the admittance of the "Report of the uccessor Trustee") and the "First and Final Account by obert Michael, Successor Trustee", which were filed with e Court during the reorganization proceedings, the former n April 13, 1942 and the latter on July 9, 1943. Both of ese reports were offered for the purpose of proving the

existence of a conspiracy, although Knight testified he had no knowledge of these reports until long after the reorganization proceedings were closed. However, though the government failed to show that he did not have knowledge of them prior to that time, they were admissible as admissions against the person who made them or on whose behalf they were filed, namely Michael. United States v. Bronson et al., 145 F. (2d) 939, 943. In addition, there was produced at the trial sufficient evidence from which the jury could find that a conspiracy existed, exclusive of these reports and since if at any time during the course of the trial, a conspiracy was shown to have existed, the acts and declarations of any conspirator are admissible as evidence against all of the co-conspirators on trial, and therefore admissible against all defendants. Budd v. Barrows, 91 U. S. 426, 437; Samiara et al. v. United States, 263 Fed. 12, 15; United States v. Rosenberg et al. 150 F. (2d) 788, 794. The defendants further urged as error the admission into evidence of sheets of yellow paper allegedly used by Reifsnyder in making the calculation on the amount due himself, Michael and Johnson, while enroute from Wilkes Barre to Scranton. While it is true that the government failed to identify these sheets as being the identical ones written upon by Reifsnyder during the automobile trip, yet it seems that the defendants, Knight and Fenner, were not prejudiced thereby since Reifsnyder is dead, Michael has pleaded guilty and Johnson was acquitted, and so it is reasonable to assume that the jury disregarded this part of the evidence altogether.

Under the sixth point, it is averred that the evidence was insufficient to support the verdict. One of the principal

reasons urged here is that Knight testified that originally the purchase price of Central depended on the value of the assets of Central, but that as a result of telephone conversations between himself and Reifsnyder, it was agreed that the Maxi Company would not take over the assets of Central as of January 1, 1942, but that the purchase price would be dependent upon the cost of administration provided it did not exceed a fixed amount. Therefore the defendants argue that since the cost of administration was Twenty Three Thousand Four Hundred Four and 33/100 Dollars ($23,404.33), the Maxi Company was not required to pay more than that figure. It is submitted that this definitely puts the cart before the horse since it could not be determined what the cost of administration would be until after the Bankruptcy Court had filed its order for reimbursement of expenses and allowances for compensation to the respective parties. In turn the Bankruptcy Court could not make these allowances until it knew what amount the Maxi Company had agreed to pay for the assets of Central. Moreover, it is difficult to see that because the money which the Maxi Company paid was to be used to defray administration expenses, that it was not really paying for the assets of Central. However, irrespective of this, the jury found Knight and Fenner guilty and the testimony regarding the telephone conversations between Knight and Reifsnyder must be ignored and that well established rule be applied that in reviewing the record on a motion for a new trial to determine the sufficiency of the evidence to sustain a conviction, the court cannot weigh the testimony to determine the guilt or innocence of the defendant, but it must take the view of the evidence most favorable to the government and sustain the verdict

if there was substantial evidence to support it. Burton v. United States, 202 U. S. 344, 373; Brastelien v. United States, supra.

Under the seventh point, the defendants allege as error that the government's closing argument to the jury was intemperate and exceeded the bounds of propriety and was prejudicial. While it is conceded that some of the statements complained of, if standing alone or in a different setting might be improper, in view of the fact that the trial was long, consuming eighteen and one-half days; the statements relied on by the defendants as being improper, few; that the evidence against the defendants was strong and convincing; that other defendants tried at the same time and for the same offenses were acquitted; that the Trial Court instructed the jury to disregard the comments made by counsel, it cannot be said that the jury was so influenced that they could not appraise the evidence objectively and dispassionately. Whether alleged misconduct on the part of the prosecution in a given case is sufficient to justify a new trial depends on the circumstances of each case, and accordingly through rulings in other cases cannot wholly govern here, they must be weighed in the light of similar situations. Dunlop v. United States, 165 U. S. 486, 498; United States v. Socony-Vacuum Oil Co. Inc, et al., 310 U. S. 150; United States v. Dubrin et al., 93 F. (2d) 499, 506.

Under the eighth point, the charge of the Trial Judge to the jury is cited as error. Under this heading the defendants cite as error the refusal of the trial Court to charge upon the legal force and effect of the official plan of reorganization. The answer to this alleged error has

been made under heading number four of this opinion and it suffices to say here that whatever legal effect the official plan might have had in a civil proceeding attacking it, it had none in this case and the Trial Judge therefore correctly omitted any reference to it. In addition, the defendants seem to infer that the Trial Court had a duty to review and comment upon the evidence. It is well settled that a Trial Judge is under no absolute duty to discuss the facts when giving his charge to the jury. United States v. Cohen et al. 145 F. (2d) 82, 92. Also cited as being prejudicial was the Trial Court's affirmation of Johnson's points for charge. Apparently, the defendants make known their objection to this portion of the charge for the first time, for there is nothing in the record which would indicate that such an objection had been made during the trial, hence they cannot now complain. Additionally the defendants cite as error that portion of the Trial Court's charge concerning the consideration the Jury was to give to character evidence. An examination of that portion of the Court's charge with reference to character testimony is clear and in conformity with United States v. Quick, 128 F. (2d) 832, 836; United States v. Schaefman, 150 F. (2d) 941.

Finally, under the ninth point is the objection to the jury's reading of certain newspaper articles. It is alleged that the defendants were prejudiced in having the jury read certain issues of a Scranton newspaper containing an article relating to a decision of the United States Supreme Court in the contempt proceeding brought against Michael. A copy of the article is not submitted nor was the matter brought to the attention of the Trial Judge and objection made thereto. However, assuming that the jury did read

the article and it contained the subject alleged, it is difficult to see how any of the defendants were prejudiced thereby as was cited in Van Riper et al. v. United States, 13 F. (2d) 961, 967; "There is no reason to suppose that the newspapers which the jury saw affected their verdict; but, if so, it was a matter of discretion for the trial judge". Further the words of Justice Holmes in Holt v. United States, 218 U. S. 245, 251, although written in 1910, are still timely: "If the mere opportunity for prejudice or corruption is to raise a presumption that they exist, it will be hard to maintain jury trial under the conditions of the present day".

A careful consideration of the entire record, taking into consideration the nature of the proceedings, leaves one persuaded with a fair degree of assurance that no error transpired at the trial of such character that its natural and probable effect, was to influence or reasonably to be taken to have influenced, the jury in reaching their verdict. While it is submitted that since the Hon. William F. Smith, the District Judge who presided at the trial, was unable to hear the motions presently determined, this court may for that reason, by virtue of statutory authority, grant in its discretion, a new trial, it is our conviction that to exercise that discretion in this case would not meet the ends of justice.

Accordingly, the motions in arrest of judgment and for a new trial are denied.

VIII.

SENTENCE AND JUDGMENT OF THE COURT

(Filed July 18, 1947)

July 18, 1947, Sentence: As to Harry S. Knight, pay a fine of $1,000.00 (Ganey).

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT.

No. 9473. OCTOBER TERM, 1947.

UNITED STATES OF AMERICA,

v.

ROBERT MICHAEL, ET AL.

HARRY S. KNIGHT,

Appellant.

ON APPEAL FROM THE JUDGMENT OF THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

Argued January 8, 1948.

Before MARIS, MCLAUGHLIN and KALODNER, *Circuit Judges.*

OPINION OF THE COURT.

(Filed August 13, 1948.)

By MARIS, *Circuit Judge.*

Homer N. Davis, George L. Fenner, Sr., Donald M. Johnson, Harry S. Knight and Robert Michael were indicted in the Middle District of Pennsylvania upon two counts charging the violation of Section 29 (a) of the Bankruptcy Act and a third count charging a conspiracy to commit the violations set out in the previous counts. In the first two counts Michael was charged as principal and the other defendants as aiders and abettors. Michael pleaded guilty to all three counts of the indictment and after a trial in the district court Davis and Johnson were acquitted and Fenner and Knight were convicted upon all three counts. From the judgment of conviction Knight took the present appeal. On appeal his principal contention is that the testimony adduced at the trial did not support the charges made against him in the indictment and that ac-

cordingly it was error for the trial judge to deny his motion for a directed verdict of not guilty.

The case grew out of the reorganization of the Central Forging Company under Chapter X of the Bankruptcy Act. That company was engaged at Catawissa, Pennsylvania, in the manufacture of valves. A reorganization proceeding has been instituted in the District Court for the Middle District of Pennsylvania some time prior to January 1, 1942, and Walter H. Compton had been appointed trustee but the reorganization plan which he had formulated had been rejected by the creditors. On January 1, 1942, Compton resigned as trustee in order to accept appointment as referee in bankruptcy and defendant Michael succeeded him by appointment by Judge Johnson of the district court. By like appointment J. Donald Reifsnyder became the trustee's counsel. Reifsnyder was named in the indictment as a confederate but was not living when it was submitted.

Defendant Knight was special counsel for Maxi Manufacturing Company, a large user of the products of the Central Forging Company, whose officers had been operating the Forging Company's plant for both trustees. Early in 1942 Michael and Reifsnyder in consultation with Knight worked out a plan of reorganization which was subsequently approved by the creditors and by the court and carried out. Under this plan the Maxi Company acquired all the assets of the Forging Company, paid its secured creditors 20% and its unsecured creditors 5% of their claims in bonds subsequently paid off in cash and paid all the expenses of the reorganization proceeding and of a preceding receivership in the state court. Since the Forging Company was found by the court to be insolvent its stockholders were barred from any participation in its assets. Defendant Davis was secretary and treasurer of the Maxi Company and defendant Fenner was its general counsel.

The indictment in its first count charged that Michael unlawfully appropriated to his own use $3,000 belonging to the estate of the Central Forging Company which money had come into his charge as trustee. Specifically the count alleged:

> "That the defendant Robert Michael, acting as Trustee . . . did arrange for the sale of all the assets of said Central Forging Company to the Maxi Manufacturing Company, under what was then designated a plan of reorganization, for an agreed amount; that the defendants and confederates herein did arrange that a part of the amount agreed upon as the purchase price of said assets, to wit, Three Thousand Dollars ($3,000.00) be paid to . . . Michael, individually and not as Trustee . . . that the defendants . . . did pay to the defendant Robert Michael $3,000.00 . . . that the defendants . . . did thereupon cause the accounts receivable in the assets of the

estate . . . to be reduced in the valuation thereof by the sum of . . . $3,000.00 and did thereupon cause to be entered in the accounts of said estate the amount received from said Maxi Manufacturing Company for the estate of . . Central Forging Company in a sum less by . . . $3,000.00 than had actually been paid therefor to the defendant . . . Michael, as Trustee; . . . Defendants . . . knowing that said . . . $3,000.00 was part of the purchase price then and there paid by . . . Maxi Manufacturing Company for the assets of the estate of . . . Central Forging Company did aid, abet, counsel, induce and procure . . . Michael . . . not to deposit the same in the funds nor list the same in the accounts of the estate of said Central Forging Company and not to use the same for the benefit of said estate, but on the contrary to appropriate the same . . . "

The second count charged that Michael unlawfully transferred certain property of the estate of Central Forging Company, to wit: accounts receivable to the approximate value of $3,000. It alleged:

"That . . . Michael . . . did arrange for the transfer of the assets of said Central Forging Company to the Maxi Manufacturing Company under what was then designated a plan of reorganization for an amount which was agreed upon between them; that the defendants . . . did thereupon cause certain assets of said Central Forging Company to wit, accounts receivable, which had theretofore been valued at approximately $23,534.50, to be shown in the records of said estate to have a valuation of $20,534.50, then and there well knowing that the said Maxi Manufacturing Company was paying for said assets . . . an amount which included the accounts receivable at their value of $23,534.50, and did represent the amount received from said Maxi Manufacturing Company for said assets to be a sum less by . . . . $3,000.00 than was actually being paid by said Maxi Manufacturing Company therefor and which was . . . $3,000.00 less than was actually being received by the defendant, . . . Michael, as Trustee . . . that . . . defendants . . . did aid abet, counsel, induce and procure . . . Michael to deprive said estate of the use and benefit of the . . . $3,000.00 . . . in that . . . Michael did transfer said assets to said Maxi Manufacturing Company without depositing in his funds as Trustee . . . the sum . . . $3,000.00 . . . and thereby deprived the estate of the Central Forging Company of the benefit of the purchase price therefor to the extent of . . . $3,000.00 . . . "

The third count charged all the defendants with conspiring to commit the offenses set out in the first and second counts.

Defendant Donald M. Johnson is a son of a former judge of the district court. There was evidence that he had been instrumental in securing the appointment by his father of Michael and Reifsnyder as trustee and counsel respectively. The theory of the prosecution was that the sum of $3,000 which was charged as having been diverted from the estate had been paid over by Michael and Reifsnyder to defendant Johnson pursuant to a plan by which he was to share in their fees. The jury, however, acquitted Johnson, and the Government's theory as to the purpose of the transaction involving the $3,000 and the receipt of the money by Johnson, therefore, falls out of the case, leaving only the charge that Michael, for the purposes of his own, appropriated $3,000 belonging to the estate and in that connection transferred $3,000 of accounts receivable without consideration being received therefor by the estate.

We turn then to the consideration of the facts established by the evidence in order to determine whether they furnish support for these charges. It appears that in January, 1942, Michael and Reifsnyder approached Knight as special counsel for the Maxi Company with the suggestion that a plan be worked out whereby the assets of the Forging Company be taken over by the Maxi Company upon terms satisfactory to the creditors. Following this conversation Knight on January 29th made a written offer on behalf of the Maxi Company to purchase the fixed assets of the Forging Company for $17,000 cash and to waive its claim as a secured creditor of the Forging Company. He calculated that under these circumstances the payment of the sum of $17,000 would be sufficient to pay the secured creditors of the Forging Company 20% and the unsecured creditors 5% on their claims. In his letter Knight suggested that the Forging Company's plant be kept operating and that its current assets be liquidated for an amount sufficient to pay expenses.

Further discussion arose between the parties as to whether the Maxi Company should take possession of the assets of the Forging Company as of the date when the final order approving the plan should be made or as of January 1, 1942. The parties had before them an accountant's report showing the assets and liabilities of the Forging Company of December 31, 1941. It was realized that the operation of the plant subsequent to that date had resulted and would continue to result in the use of current assets and their conversion into the form of finished products and new accounts receivable. Knight accordingly suggested that the Maxi Company should take over all the assets as of January 1, 1942, assuming the results of the trustee's operations during the intervening

period and paying for the current assets thus taken over in addition to the sum of $17,000 agreed to be paid for the fixed assets.

After some further negotiations the parties reached an agreement upon a revised plan of reorganization under which the Forging Company was to be merged with the Maxi Company, all of its assets being transferred to the Maxi Company, its secured creditors were to receive 20% of the face amount of their claims in debenture bonds of the Maxi Company and its unsecured creditors were to receive 5% of the amount of their claims in similar bonds, such bonds aggregating $17,000. Under the plan the stockholders of the Forging Company were to receive nothing and the fees and expenses of the prior receivership in the state court and of the reorganization proceeding in the district court were to be paid in cash by the trustee. The trustee at the time did not have funds in his possession for this purpose and the plan did not specify the source from which he was to obtain the necessary funds. It is perfectly clear from the evidence, however, that it was understood by everyone that these funds were to come from the Maxi Company and it is equally clear that the Maxi Company's liability to pay to the trustee the moneys required by him for this purpose was limited to $26,404.33, which was the amount on December 31, 1941, as shown by the accountant's report, of the net current assets of the Forging Company which the Maxi Company was to receive.

There was evidence which would support a finding that the Maxi Company obligated itself to pay $26,404.33, in addition to the $17,000 to which it was committed by the issuance of its debenture bonds in that amount to the Forging Company's creditors. The evidence, however, leaves no escape from the conclusion that the sum of $26,404.33 thus agreed to be paid was to be used only for the payment of expenses as allowed by the district court and that neither the creditors nor stockholders of the Forging Company had any interest in or claim upon that sum. The necessary conclusion, therefore, is that the Maxi Company's obligation under the plan was to pay $17,000 through its debenture bonds to the Forging Company's creditors and in addition to pay the expenses of the receivership and reorganization proceedings, as allowed by the District Court, to an amount not exceeding $26,404.33.

The plan of reorganization thus agreed upon was approved by the district court on March 16, 1942, for submission to the creditors. It was subsequently approved by the requisite majorities of the creditors and was finally confirmed by the district court on April 17th, and consummated on April 24th.

On April 8, 1942, Reifsnyder and Michael called upon Knight and informed him that they desired to secure $3,000 in addition to the allowances which the district court would make to them. It was suggested that this could be done by reducing by $3,000, in the

report to be made by Michael to the court, the amount of accounts receivable shown in the net current assets of December 31, 1941, so that the latter would appear to amount to only $23,404.33 instead of the true figure as of that date, $26,404.33. It was evidently thought, and rightly so, as events turned out, that the court would limit the allowances to the figure thus reported, in which case the Maxi Company would be able to pay Michael the $3,000 requested by him without exceeding the total amount which it had originally agreed to pay. After some discussion and a conference by Knight with Davis, who was treasurer of the Maxi Company, that company agreed to make the payment as requested. It was also agreed that the check of the Maxi Company for this sum of $3,000 should be drawn to its general counsel Fenner who, deducting $500 to cover his estimated income tax thereon, would pay the remaining $2,500 over to Michael.

The plan thus agreed upon was carried out. Michael through his counsel Reifsnyder filed his report in the district court on April 14, 1942, showing net current assets of the Forging Company in the sum of $23,404.33. This was done by reducing the accounts receivable entering into the computation from $23,534.50 to $20,534.50. On April 20th Judge Johnson made an order allowing fees and expenses of the receivership and reorganization proceeding which he stated "fully exhausts the fund of $23,404.33 available for fees, allowances and expenses as itemized in the report of the Trustee."

The reorganization plan having been confirmed by the court on April 17th, Fenner, Max Long, president of the Maxi Company, Davis, Reifsnyder, Michael and Knight met in Knight's office to consummate it. A bill of sale and a deed for the assets of the Forging Company were delivered to the Maxi Company. The debenture bonds of the Maxi Company in the face amount of $17,000 were delivered to Michael as trustee for delivery to the creditors of the Forging Company. The sum of $17,000 in cash was paid to an escrow agent for the redemption of the debentures. Checks were drawn by Davis, treasurer of the Maxi Company, and countersigned by Long, its president, for the fees and expenses as allowed by the court and finally a check for $3,000 was similarly drawn payable to Fenner as agreed upon. The parties then went to the Catawissa National Bank where Fenner endorsed the check and cashed it, retaining $500 and giving the remaining $2,500 to Michael.

The question for decision is whether these facts support the charges made in the indictment that Michael appropriated to his own use $3,000 of funds belonging to the estate of the Forging Company and that in connection therewith he unlawfully transferred $3,000 of accounts receivable of the Forging Company to

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the Maxi Company. We think the answer must be in the negative. It is perfectly clear from the evidence that the defendants entered into a scheme to secure for Michael a payment of $3,000 to which he was not entitled under the plan or order of the court granting him allowances as trustee and this was accomplished by the use of devious means involving misleading the district court into thinking that the amount available for allowances under the plan was $3,000 less than in fact it was and the payment of the sum to Micheal through an intermediary, Fenner, who was to pay income tax on it. The whole transaction was highly reprehensible and it may well have involved the commission of a criminal offense. Indeed under another indictment defendant Michael pleaded guilty to another charge growing out of these occurrences. The question before us, however, is not whether the defendant Knight committed any crime but only whether he aided and abetted Michael to violate Section 29 (a) in the manner described in the indictment.

The charge of the indictment is, as we have seen, based upon the premise that the sum of $3,000 which Michael received in the manner described belonged to the estate of the Forging Company. The facts, however, do not sustain this basic premise for it is perfectly clear from the undisputed evidence that no one other than the Maxi Company had any interest in the $3,000 which it paid to Michael through Fenner. For on April 8th, when the scheme to obtain the $3,000 was devised, the plan of reorganization had already been approved by the court and the creditors. The rights of the parties in interest in the estate of the Forging Company had thereby become fixed and established. Under the plan of reorganization, as we have said, the sole rights of the creditors were to receive the debenture bonds which the Maxi Company issued and which were delivered to them. The stockholders had no rights whatever. The Maxi Company was entitled to all of the assets of the Forging Company and its only other obligation was to pay the expenses as allowed by the court. This obligation it fulfilled to the letter.

It is perfectly true that if the court had been informed that the net current assets amounted to $26,404.33 instead of only $23,404.33 it might well have awarded the larger sum instead of the smaller in the form of allowances. As we have said, it is perfectly clear that the defendants misled the court in this respect and well may have been guilty of a crime in so doing. But since the court did not in fact make allowances in excess of $23,404.33, the Maxi Company's obligation under the plan to pay the expenses was limited to that amount and its payment to Michael through Fenner of an additional $3,000 was a purely voluntary payment out of its own funds of a sum upon which the estate of the Forging Company had no claim.

What has been said applies equally to the charge in the second count of the indictment that $3,000 of accounts receivable were transferred without consideration. The fact is, as we have already pointed out, that the figure in question involved the amount of accounts receivable on December 31, 1941. There is evidence that most, if not all, of those accounts receivable were collected between December 31, 1941 and April 24, 1942 and there is no evidence as to the amount of accounts receivable actually transferred to the Maxi Company on the latter date. But whatever they were, the Maxi Company was entitled under the plan of reorganization to receive them and it did receive them along with all the other assets of the Forging Company. The sole consideration under the plan which the Maxi Company was obligated to pay for all of the assets of the Forging Company which it received, including the accounts receivable, was the issuance by it to the creditors of the Forging Company of its debenture bonds in the sum of $17,000 and its payment of the expenses of administration as allowed by the district court. We have seen that this consideration was paid in full by the Maxi Company.

We, therefore, conclude that the evidence did not support the charges made in the indictment and that the district judge should have granted the motion of defendant Knight for a directed verdict. This conclusion makes it unnecessary for us to consider the other questions raised by the appellant.

The judgment of the district court will be reversed and the cause will be remanded with directions to enter a judgment of acquittal in favor of the appellant Knight.

KALODNER, *Circuit Judge*, dissenting.

The majority's position is that while the transaction under review "may well have involved the commission of a criminal offense" there was no crime committed within the purview of Section 29 (a) of the Bankruptcy Act.[1] Pointing out that under the plan of reorganization the stockholders had no rights whatever and that the creditors received all the benefits allotted to them by the reorganization plan and were not affected by the transaction in any respect, the majority takes the position that the $3,000 pay-

[1] Section 29(a) of the Bankruptcy Act, as amended, 11 U. S. C. A. Section 52(a) provides:

"'(a) A person shall be punished by imprisonment for a period of not to exceed five years or by a fine of not more than $5,000, or both, upon conviction of the offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent, or unlawfully transferred any property or secreted or destroyed any document *belonging to the estate of a bankrupt* which came into his charge as trustee, receiver, custodian, marshal, or other officer of the court.'" (emphasis supplied)

ment by the Maxi Company to the Trustee "was a purely voluntary payment out of its own funds of a sum *upon which the estate of the Forging Company (the bankrupt) had no claim.*" (emphasis supplied). In the latter statement, in my view, lies the error of the majority.

The estate of the bankrupt was trust property. As such it was a distinct and separate res, corpus or entirety. It was a dynamic unit with established content. That is was so is evidence by the provisions of the Bankruptcy Act, as amended by Section 1 (a) of the Act of June 22, 1938, c. 575, (11 U. S. C. A. Sec. 110 (a)) which, in providing that title to the property of the bankrupt shall "be vested by operation of law" in the trustee, designated the entrusted property as the "estate of the bankrupt".[2]

The continued existence of the estate of a bankrupt as a distinct and separate res, corpus, entirety or unit in bankruptcy is similar in every respect to that of the ordinary trust property. As under the law of trust, the trustee of the bankrupt estate is under a duty to keep the trust property separate from his individual property, to see that it is designated as property of the trust, and to so treat it. Just as under the law of trust, trust property is earmarked "property of the trust" in order to identify its separate existence, so has Congress designated the trust property here involved as the "estate of the bankrupt". Equity has long recognized the nature of a trust estate as an entirety and safeguarded its existence, as for example, by impressing with the trust property transferred by the trustee in violation of his trust to a person who knows the circumstances even though he paid a consideration for the transfer. Restatement of the Law of Trusts, Section 288.

It was the duty of the trustee to preserve the bankrupt estate. The $23,534.50 of accounts receivable or the proceeds received in their collection constituted part and parcel of the estate of the bankrupt. It was the integrity of the estate which Section 29 (a) was designed to protect. When the arbitrary, unjustified and unexplained $3,000 reduction was made in the total of accounts receivable and the estate received $3,000 less as a result from the Maxi

[2] Subsection e(2) of Section 1 of the Act of June 22, 1938, 52 Stat. 879, refers to the "*estate*"; subsection (f) refers to "items of real and personal property belonging to the *bankrupt estate*"; subsection (g) refers to "the title to property of a *bankrupt estate*". 11 U. S. C. A. Sec. 110 e(2), f, and g.

Section 2 of the Bankruptcy Act, as amended, 11 U. S. C. A. Sec. 11, which provides for the "Creation of courts of bankruptcy and their jurisdiction", refers in subsection a(2) to "*bankrupt estates*"; subsection a(3) authorizes appointment of receivers, etc. "*to preserve the estate*"; subsection a(7) empowers the bankruptcy courts to "cause the *estates of bankrupts* to be collected," etc.; subsection a(8) empowers the bankruptcy courts to "*close estates*" and to "*reopen estates*".

Section 29(a) specifically prohibits the misappropriation of property "*belonging to the estate of a bankrupt*". See note 1, supra.

Company, and the Trustee was paid the $3,000 in consideration of that reduction, there was a misappropriation of the assets of the estate. The mere circumstance that the creditors and stockholders were not affected under the existing reorganization plan is entirely beside the point. The mere fact that there was no net change in the disbursements to any of the individuals concerned in the administration of the estate is also of no consequence. What is in point is that the bankrupt estate was defrauded of $3,000, which would otherwise have been available for distribution.

On January 1, 1942, when Michael took over as Trustee, the estate had accounts receivable of $23,534.50. In his April 14, 1942, report he falsified the amount of the accounts receivable, placing them at $20,534.50. No explanation of the reduction was attempted. There was no evidence of any actual shrinkage in the total of the accounts receivable as a result of uncollectibility. As a matter of fact, as pointed out in the majority opinion, there was evidence "that most, if not all of those accounts receivable were collected between December 31, 1941, and April 24, 1942."

The bankrupt estate was entitled to possession of the proceeds of whatever accounts receivable were collected, and if any of the latter remained uncollected, to the accounts themselves.

That the right of possession was violated with an attending fraudulent misappropriation within the meaning of Section 29 (a) as was found by the jury and the District Judge in denying the defendant's motion in arrest of judgment and for a new trial is crystal clear.

I can see no merit in the appellant's remaining contentions and for that reason would affirm.

A true Copy:

Teste:

Clerk of the United States Circuit Court of Appeals for the Third Circuit.

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 9473.

UNITED STATES OF AMERICA,

v.

ROBERT MICHAEL, ET AL.

HARRY S. KNIGHT,
Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

Present: MARIS, MCLAUGHLIN and KALODNER, *Circuit Judges.*

JUDGMENT.

This cause came on to be heard on the record from the United States District Court for the Middle District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby reversed and the cause is remanded with directions to enter a judgment of acquittal in favor of the appellant Knight.

By the Court:
MARIS,
Circuit Judge

August 13, 1948
Endorsements—

Judgment Reversing Judgment of the District Court, etc.
Received & Filed Aug 13 1948

Ida O. Creskoff
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT.

No. 9473, Term, 19

UNITED STATES OF AMERICA

v.

ROBERT MICHAEL, ET AL.

HARRY S. KNIGHT,
Appellant.

Present: BIGGS, *Chief Judge*, and MARIS, GOODRICH, MCLAUGHLIN, O'CONNELL and KALODNER, *Circuit Judges*

SUR PETITION FOR REHEARING

And Now, to wit, October 13, 1948, after due consideration, the petition for rehearing in the above-entitled case is hereby denied.

Philadelphia,

MARIS,
Circuit Judge.

Endorsements—

Order Denying Petition for rehearing.
Received & Filed Oct 13 1948

Ida O. Creskoff
Clerk

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT.

No. 9473.

UNITED STATES OF AMERICA,

v.

ROBERT MICHAEL, ET AL.

HARRY S. KNIGHT,
Appellant.

The Clerk of this court is hereby authorized to transmit to the Clerk of the Supreme Court of the United States the original record on appeal in the above-entitled cause.

KALODNER,
Circuit Judge.

November 9, 1948.

Received & Filed Nov. 9, 1948
Ida O. Creskoff, *Clerk*

I, Ida O. Creskoff, Clerk of the United States Court of Appeals for the Third Circuit, DO HEREBY CERTIFY the foregoing to be a true and faithful copy of the original Appendix to Appellant's Brief, Appendix to Appellee's Brief, and proceedings in this court in the case of United States of America vs. Robert Michael, et al., Harry S. Knight, Appellant, No. 9473, on file, and now remaining among the records of the said Court, in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 9th day of November in the year of our Lord one thousand nine hundred and forty-eight, and of the Independence of the United States the one hundred and seventy-third.

(S) IDA O. CRESKOFF,
Clerk of the U. S. Court of Appeals, Third Circuit.

(SEAL)

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1948.

No. 406.

UNITED STATES OF AMERICA, *Petitioner*,

v.

HARRY S. KNIGHT.

STIPULATION AS TO CONTENTS OF PRINTED RECORD ON PETITION FOR CERTIORARI

Subject to the approval of this Court, it is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that for the purpose of the petition for a writ of certiorari the printed record shall consist of the following:

(1) The appendix to the respondent's brief in the United States Court of Appeals for the Third Circuit.

(2) The proceedings had before the United States Court of Appeals for the Third Circuit, exclusive of the petition for rehearing.

It is further stipulated and agreed that petitioner will cause the clerk of the Court of Appeals to file with the Clerk of the Supreme Court the entire transcript of record in the former court, including the exhibits, and that in the event the petition for certiorari is granted, the printed record shall consist of the proceedings in the court below and such portions of the entire transcript of record as the parties may designate.

It is further stipulated and agreed that both parties hereto may refer in their briefs to the original transcript of record filed in the Supreme Court pursuant to this stipulation.

It is further stipulated and agreed that certified copies of the transcript of oral argument in the Court of Appeals and respondent's brief in opposition to the petition for rehearing in the Court of Appeals may be lodged with the Clerk of the Supreme Court, and that both parties hereto may refer in their briefs to these documents.

PHILIP B. PERLMAN,
Solicitor General.
ROBERT T. MCCRACKEN,
Counsel for respondent.

November 15th, 1948.

☆ U.S. GOVERNMENT PRINTING OFFICE 1948—813916/P.O. 24

CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 406

THE UNITED STATES OF AMERICA, PETITIONER

vs.

HARRY S. KNIGHT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 10, 1948
CERTIORARI GRANTED JANUARY 3, 1949

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822287—49——1



In the Supreme Court of the United States

Stipulation as to contents of printed record on writ of certiorari

Filed January 25, 1949

Subject to the approval of this Court, it is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the printed record to be filed in connection with the writ of certiorari shall be the same printed record heretofore filed in connection with the petition for the writ, with the addition of the following materials:

(1) The following excerpts from the original transcript of record now on file with the Clerk of this Court:

(a) Page 12, line 4, beginning "Mr. PRATT. In repeating * * *," to and including page 13, 4th line from bottom, ending "(Exhibit G–2 received in evidence.)."

(b) Page 19, 8th line from bottom, beginning "Mr. ROBINSON. Do I understand, your Honor, * * *," to and including page 57, line 9, ending "'The WITNESS. That is correct.'"

(c) Page 64, 6th line from bottom, beginning "NOON RECESS," to and including page 78, middle of 6th line from bottom ending "* * * that concludes the reading of this testimony of Mr. Knight's."

(2) The order of January 3, 1949, granting certiorari.

(3) This stipulation.

It is further stipulated and agreed that both parties hereto may refer in their briefs and oral argument on the writ to the certified copy of the transcript of oral argument in the Court of Appeals, which was lodged with the Clerk of this Court at the time of the filing of the petition for a writ of certiorari.

Philip B. Pearlman,
PHILIP B. PEARLMAN,
Solicitor General.

Robert T. McCracken,
ROBERT T. MCCRACKEN,
Counsel for Respondent.

JANUARY 25, 1949.

[File endorsement omitted.]

822287—49——1

In the District Court of the United States for the Middle District of Pennsylvania

Cr. 11348

UNITED STATES OF AMERICA

v.

DONALD JOHNSON, HOMER N. DAVIS, GEORGE L. FENNER, SR., AND HARRY S. KNIGHT, DEFENDANTS

SCRANTON, PA.,
Tuesday, October 16, 1945.

Before: Hon. William F. Smith, U. S. D. J., and a Jury.

Appearances: John S. Pratt, Esq., and Ben Brooks, Esq., Special Assistants to the Attorney General; Alphonsus Casey, Esq., and Arthur A. Maguire, Esq., Assistant United States Attorneys, Representing the Government. Charles J. Margiotti, Esq., and V. J. Rich, Esq., Representing Defendant Donald Johnson. J. Julius Levy, Esq., and Michael Kivko, Esq., Representing Defendant Harry S. Knight. Otto P. Robinson, Esq., Representing Defendant George L. Fenner, Sr. R. L. Coughlin, Esq., Representing Defendant Homer N. Davis.

Offer of exhibit G–2

Mr. PRATT. In repeating, directing the Court's attention to the proceeding had in this court in September 1944, wherein Robert Michael was charged with contempt of court, I am offering in evidence the transcript of the testimony on that occasion of Harry S. Knight. I am offering this only as against that defendant, Harry S. Knight. This is a transcript of the testimony which was taken on that occasion by Mr. Barrows, the official court reporter for this court, and thus I take it the transcript will be recognized as an accurate transcription of the stenographic notes which were taken on that occasion of the testimony of Harry S. Knight.

The COURT. Let it be marked G–2 and let the record reflect that Mr. Levy, on behalf of Mr. Knight, concedes that the record is authentic, reserving, however, his right to object to its admissibility on any other ground.

Mr. LEVY. Now, if Your Honor please, I desire to enter a general objection to the competency and relevancy of Mr. Knight's testimony in the proceedings of the *United States* v. *Robert Michael*. Specifically I desire to object to its competency and relevancy at this time because the Government has not shown or has not offered

any evidence tending to prove that a crime, as charged in the indictment, was committed.

Secondly, I object to the relevancy and competency of the testimony because in a number of instances the testimony given by Mr. Knight is not the best evidence and is not proof of the statements made therein. Also because in a number of instances questions were asked of Mr. Knight and answers given which assumed facts which were not then in evidence and which are not now in evidence. As I have already stated to the Court on a previous occasion, not knowing what the Government is going to prove, I desire to reserve such further objections to the statement now offered in evidence as the evidence offered by the Government hereafter may warrant.

The COURT. The objection is overruled and you may have an exception. The transcript may be received and marked in evidence, reserving to the defendant the right to move to strike the exhibit should the grounds already urged be later sufficiently established so as to enable the Court to rule on it intelligently. That reservation goes not only to the exhibit but any part of the exhibit.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed) _____ U. S. D. J.)

(Exhibit G-2 received in evidence.)

Mr. ROBINSON. Do I understand, Your Honor, that you are going to instruct this jury that the testimony to be read by Mr. Pratt now is not admissible against any other of the defendants? If that is so, I won't object.

The COURT. Yes, that's right.

Now, ladies and gentlemen of the jury, this document which Mr. Pratt is about to read is a transcript of the testimony of the defendant Knight's testimony given by Mr. Knight in another proceeding in which he was called as a witness. This testimony is received here for a very limited purpose and it is binding, if at all, only on the defendant Knight. The importance of that is simply this: In the course of this testimony Mr. Knight may have mentioned or named some of the codefendants in the present trial; statements made by Mr. Knight in this testimony, the testimony given at the earlier hearing, is not binding in any way as to the other defendants, and for the purposes of this trial we term it hearsay. At the conclusion of the trial I shall endeavor to explain it to you more in detail but I want you to bear in mind, as you follow the reading of the testimony, that it has no significance as to any defendant other than the defendant Knight. That's the limited purpose of the offer.

Is that adequate, gentlemen?

Mr. ROBINSON. Very adequate.

The COURT. All right. You may proceed, Mr. Pratt.

Mr. PRATT. Thank you.

Exhibit G-2

(Mr. Pratt read to the jury as follows:)

"Harry S. Knight, called as a witness in behalf of the Government, being duly sworn, testified as follows:

"Q. Mr. Knight, where do you live?—A. Sunbury, Pennsylvania.

"Q. What is your business?—A. Practicing lawyer.

"Q. How long have you been practicing law?—A. Fifty-two years.

"Q. Did you represent the Maxi Manufacturing Company of Catawissa during the years 1941 and '42?—A. Yes, I did. I wasn't their general counsel but I represented them in the reorganization litigation.

"Q. Now, as attorney for the Maxi Manufacturing Company, Mr. Knight, for that plan of reorganization will you tell us whether or not you had any conferences with the trustee under that proceeding during the year 1942?—A. I had.

"Q. And who was the trustee in that case?—A. Mr. Michael.

"Q. Now, who was Mr. Michael's attorney in that case?—A. Mr. Reifsnyder.

"Q. Now, can you recall when you started proceedings or negotiations with them for a plan of reorganization?—A. Well, I can't give you a definite date.

"The COURT. Mr. Knight, this might also save time: If you have any of your files here that you care to use to refresh your recollection on any of these dates you may resort to them.

"The WITNESS. Your Honor, the files that particularly would concern this matter about which I am now being examined have been turned over to Mr. Goldschein and I presume he is now handing them to me.

"The COURT. All right. If you want to call for any part of it at any time you may do it because I realize you can't carry in your mind the details of every case that you probably handled in your fifty-two years of practice.

"The WITNESS. Well, it is pretty difficult to carry a recollection back in 1942 when you are carrying on an active practice.

"The COURT. That is what I say, if you need any part of the file just call for it and Mr. Goldschein will give it to you.

"A. I refresh my memory from a copy of a letter which I wrote to Mr. Reifsnyder dated January 29, 1942, which shows on its face some details of an offer which my clients, the Maxi Company, were willing to pay Mr. Reifsnyder's client for the assets of the Central

Forging Company. It is barely possible that there might have been a conference in January, prior to that date, with Mr. Michael and Mr. Reifsnyder, I couldn't swear to that positively. It could not have been before the first of January because Mr. Michael was appointed to take—to succeed the former trustee, I think, only as of January 1st.

"Q. Now, that letter of January 29th, 1942, you identify as a copy of a letter which you sent to Mr. Reifsnyder with reference to a proposal on the Central Forging Company?—A. I do. That was taken from my files and I have marked it 'From files of H. S. K.,' being my initials, 'August 31, 1944,' being the date that the agents took it from my files with my permission.

"The COURT. Let the letter be marked at this time G–1 for identification so that there may be no confusion in the record about what document he is referring to.

"(Marked Exhibit G–1 for identification, as of this date.)

"Q. Now, Mr. Knight, do you recall whether or not you had a conference with Mr. Michael prior to this date of January 29, 1942, with reference to the matter set out in this letter?—A. I couldn't say positively that I had; my impression would be that I doubtless had and that the letter was the culmination of the conference. But if you ask me to say positively that I had, I couldn't say that.

"Q. Now, Mr. —— A. (Interposing.) I might add to what I have said concerning a prior conference. It is possible that my date book of 1941, which was turned over to your people, might show that. The clause in this letter would be confirmatory of my recollection, the next to the last clause in the letter, that there had been some talk before this letter was written.

"Q. Now, that talk was between who, Mr. Knight?—A. Well, it would have been between Mr. Michael and Mr. Reifsnyder because they were—if there were any personal calls made at the office they were always together.

"Q. Now, Mr. Knight, do you recall whether or not you had a conference at your office on April 8, 1942, with reference to the Central Forging Company?—A. With whom?

"Q. Whether you had a conference at your office on that day, April 8, 1942, with either Mr. Michael, Mr. Reifsnyder, Mr. Davis——A. I would like to have access to my date book.

"Q. Will this refresh your recollection?—A. I believe, after looking at a copy of a letter—and I would like to look at the date book because I believe it will confirm it—Mr. Michael and Mr. Reifsnyder were at my office on April 8th.

"Mr. COAR. Pardon me Mr. Knight, I didn't get the first part of that. Are you stating that as a fact that they were there at your office on that date?

"The WITNESS. I am stating it as a fact, yes.

"Mr. COAR. All right.

"The WITNESS. And I am stating that as a fact after I refresh my memory from my own letter, a copy of my own letter taken from my own files. If you give me no data I can't say where they were on any certain date any more than I can tell you what I had for breakfast that morning, but after refreshing myself from my letter dated April 9th to Mr. Davis, I would say from that refreshment, as a fact, that Mr. Michael and Mr. Reifsnyder were at my office on April 8th."

Now, at this point, if the Court please, before proceeding further with the reading of this testimony, I should like to offer in evidence the letter which Mr. Knight identified in connection with his testimony and which I have in my hand the letter dated January 29, 1942. I am offering this as against Mr. Knight alone as being a part of his testimony in connection with the testimony in the case.

The COURT. Let me ask one question, first: Is the letter you now offer a part of the transcript in the other proceeding?

Mr. PRATT. It is identified in the transcript as having been received in evidence on that occasion and it has the identifying marks of the reporter on that occasion.

The COURT. And its identifying mark on that occasion was what?

Mr. PRATT. "Government's Exhibit G-1," which I assume is in the handwriting of Mr. Barrows.

The COURT. All right, Mr. Levy, I will hear you.

Mr. LEVY. If Your Honor please, I want to object at this time to this letter; first on the ground it is a carbon copy and the Government has not accounted for the original; secondly, on the ground that the contents of the letter indicate that it is not the best evidence, it refers to book accounts and other matters that have been relayed to Mr. Knight as counsel for the Maxi Manufacturing Company in the way of figures that were apparently taken from books and from financial statements, and that is not in evidence and, therefore, is not the best evidence; and, third, on the ground, as I said before, that the corpus delicti in this case has not been proved by the Government and no evidence has been introduced so far tending to show the commission of a crime or tending to show the fact of that crime.

The COURT. Mr. Pratt, is there some——

Mr. LEVY (continuing). And also on the ground that we would have a right of cross-examination of that particular letter if it were offered in the first instance against my client. In other words, we haven't had the right of cross-examination of any of this so-called admission that is now being offered in evidence.

The COURT. Mr. Pratt, by whom was this letter written?

Mr. PRATT. This letter was written by Harry S. Knight, the defendant. It is a carbon copy of a letter which he wrote, produced from his files, with his initials in his handwriting as indicated by his testimony.

The COURT. Well, suppose you first read that part of the transcript in which Mr. Knight identified the letter as his, if he did, and then follow it with a renewal of your present offer.

Mr. PRATT. I have already read that part, if the Court please.

The COURT. Did you read all of it?

Mr. PRATT. I read it.

The COURT. Just repeat it for me.

Mr. PRATT. Yes.

The COURT. Briefly.

Mr. PRATT. "The COURT. That is what I say, if you need any part of the file just call for it and Mr. Goldschein will give it to you.

"A. I refreshed my memory from a copy of a letter which I wrote to Mr. Reifsnyder dated January 29, 1942, which shows on its face some details of an offer which my client, the Maxi Company, were willing to pay Mr. Reifsnyder's client for the assets of the Central Forging Company. It is barely possible that there might have been a conference in January, prior to that date, with Mr. Michael and Mr. Reifsnyder, I couldn't swear to that positively. It could not have been before the first of January because Mr. Michael was appointed to take—to succeed the former trustee, I think, only as of January 1st.

"Q. Now, that letter of January 29th, 1942, you identify as a copy of a letter which you sent to Mr. Reifsnyder with reference to a proposal on the Central Forging Company?—A. I do. That was taken from my files and I have marked it 'From files of H. S. K.,' being my initials, 'August 31, 1944,' being the date that the agents took it from my files with my permission."

The COURT. All right, Mr. Levy, your objection is overruled. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed) ---------- U. S. D. J.)

The COURT. Let the letter be received and marked in these proceedings with an additional identification mark. This will be part of the transcript, which is G-2; this will be G-2-A.

Mr. MARGIOTTI. If Your Honor please, we have never seen a copy of that letter; I am wondering if the Government has a photostat of it for our purposes?

Mr. PRATT. Yes, we have.

The COURT. Do you want to read it first?

Mr. MARGIOTTI. No, I am satisfied that it is admissible, I just want to have a copy of it for our own purposes.

The COURT. All right.

Mr. ROBINSON. I just want to get the record clear. I think Mr. Pratt has offered this only against Mr. Knight, alone, at this stage in the proceedings?

Mr. PRATT. That is correct.

The COURT. This letter, likewise, ladies and gentlemen, is to the extent that if it is admissible at all, is admissible only against the defendant Knight.

(Exhibit G–2–A was received in evidence.)

Mr. PRATT. I have a photostatic copy but it isn't in the courtroom at the moment, but I will loan it to Mr. Margiotti.

Mr. MARGIOTTI. Well, I don't need it immediately, some time during the morning if I can get a copy, but I assume you are going to read it to the jury.

Mr. PRATT. Now, reading this letter, dated January 29, 1942, addressed to Donald Reifsnyder:

Exhibit G–2–A

"DON REIFSNYDER, Esq.,
"*Scranton National Bank Building,*
"*Scranton, Penna.*

"DEAR MR. REIFSNYDER:

"Re: Central Forging Company

"I spent all of Wednesday afternoon with the officials of the Maxi Company to ascertain whether or not they would be interested in paying anything to acquire the Central Forging Company. There is a decided division of opinion among these people as to whether or not they should invest anything in the Central. Finally it was agreed to make the following proposition:

"(1) That they will pay to you in cash the sum of $17,000 for a clear and unencumbered title to the land, plant, machinery and equipment and all assets of every kind and character except accounts receivable, cash, goods in process, goods finished, and raw material; and will waive its (Maxi Company's) claim to participate in the bonds of the Central Forging Company now held by the Maxi Company, aggregating $21,300.

"(2) This proposition is made upon the condition that it be promptly accepted, and that the legal machinery to carry it into effect be promptly started.

"(3) That if accepted, the plant be kept operating as heretofore until it can be taken over by the purchaser; the details of how this is to be done and at the same time liquidate the current assets for the payment of expenses, to be worked out between the Maxi and the Trustee.

"Maxi now has a plan to do this, which can be submitted at the proper time.

"(4) If accepted, of course, the Maxi and Mr. Fred Long and Mr. Max Long would continue to cooperate in operating the Central as heretofore.

"As to the supplies now on hand, it is understood that certain of these supplies will be consumed during the course of operation by the Trustee until a sale and delivery could be consummated. If any of these supplies remain unused at the time of the consummation they are to be included, for the sale price. If at the time of the consummation there is any inventory on hand, the purchaser will arrange to take it over at cost to the Central Forging Co. This is in addition to the purchase price above mentioned.

"Our calculation is that the amount that we would pay in would be sufficient to pay to the bondholders, outside of the bonds held by Maxi, a dividend of 20%, and would leave over 5 to 8% to pay on the unsecured creditors, in addition to all of the expenses.

"The audit was not completed when I was in Catawissa. From the work sheets Mr. Davis furnished the following statement of current assets and current liabilities:"

There then follows itemized current assets totalling $52,376.16, and likewise an itemized statement of current liabilities totalling $22,953.05, and then the statement: "Net current position January 1, 1942, $29,423.11.

"I am informed by Mr. Davis that upon a collection and liquidation of these assets they would produce the amount set out in the statement, so that there would be no shrinkage.

"I am informed, also, that while this statement is of January 1st, 1942, that there would be no material difference in the current position from month to month over a period of a few months——"

I would like to have a glass of water if the bailiff will bring it to me shortly.

Mr. LEVY. If Your Honor please, while we are waiting I wonder if I could not add to my objection the general——

Mr. PRATT. "That is, there might be——"

Mr. LEVY. One minute, please.

Mr. PRATT. I beg your pardon.

Mr. LEVY. The general objection that it is immaterial, irrelevant, and incompetent to be later fully specified after the Government has produced evidence in connection with that letter.

The COURT. Yes, sure.

Mr. PRATT (continuing): "That is, there might be in the next month less inventory but it would reflect itself in greater receivables; and the receivables might become less, which would reflect

itself in the cash, and cash used to pay the payables, so that the net would remain about the same.

"The printed plan of Mr. Compton shows there are priority claims of $1,080. There is payable as expenses to what might be called the Beckley or Smith crowd, allowed by the Federal Court $2,500: Add to these last two items a very rough estimate of the expenses, we would have a total of not to exceed $20,000 or $21,000; so that all of these could be paid out of the net current without even using any of the supplies, and have a few thousand dollars left.

"I am strongly inclined to the opinion that the only procedure to be followed in order to accomplish the sale as above proposed would be to have a prompt adjudication in bankruptcy, and then a petition to sell at private sale, and before this it would be necessary, or at least expedient to agree with the Bondholders' Committee that they would accept this amount, or approximately the amount, and have them agree by a power of attorney to vote for Mr. Michaels as Trustee, at least in so far as their claims are unsecured, and then have Mrs. Beckley and the other small unsecured creditors agree to a sale such as above and to vote for Mr. Michaels as Trustee.

"So far as any claims which the Maxi Company could control are concerned, I would be willing to have them vote for Mr. Michaels as Trustee.

"I am laying this before you promptly as per my promise so that if it appeals to you, you can take it up promptly, which will be necessary under the offer.

"I shall be absent from my office on Friday and Saturday of this week, and on Wednesday and Thursday of the following week. If at any time you desire to confer with me you had better call me on the telephone before coming here.

"Very truly yours,

"HARRY S. KNIGHT."

And then below: "I enclose a carbon copy of this letter which you may want to hand to Mr. Michaels."

I will now continue reading from the transcript of Mr. Knight's testimony. I will resume reading from what appears to be page 19 of the transcript of the whole testimony.

"The WITNESS: And I am stating——"

Mr. MARCHETTI. You read that part.

Mr. PRATT. "That as a fact after I refresh my memory from my own letter, a copy of my own letter taken from my own files. If you give me no data I can't say where they were on any certain date any more than I can tell you what I had for breakfast that morning,—" I think this is repeating a bit.

The COURT. That is what Mr. Margiotti said, it is repetitious, but go on.

Mr. PRATT. Just a few little words.

(Continuing:)"—but after refreshing myself from my letter dated April 9th to Mr. Davis, I would say from that refreshment, as a fact, that Mr. Michael and Mr. Reifsnyder were at my office on April 8th.

"As the other part of the question, I believe when your agents first called on me they asked me whether Mr. Davis was present and my answer then was, and I think my answer before the Grand Jury in answer to your interrogation, that personally I didn't have a recollection of Mr. Davis being there at the time. But my recollection also is, which you can confirm here with the book, that the book says that I spent the afternoon—meaning the date book—with these three people. Now, whether they were all there at the same time, I mean by that whether Mr. Davis was there at the exact time that Mr. Michael and Mr. Reifsnyder were there I am not able to say and the book wouldn't be conclusive on that because that book is made merely for a memorandum of the client for whom I spent time and the book shows, as I recollect it, when you presented it to me and when I saw it subsequently, that the time was spent in the afternoon with Mr. Michael, Mr. Reifsnyder and Mr. Davis. I do recollect distinctly that Mr. Michael and Mr. Reifsnyder were there because it was followed by the letter which says they were there the day before; and I have every reason to believe, in fact I am satisfied from the book, that Mr. Davis was there some time during the afternoon, although that is only from the book. Personally I would have said no if you would ask me without looking at the book. But that is a '42 recollection and I would say now that the book is correct, but whether they were—he was there at the same time that these two gentlemen were, I can't testify to that positively."

In order that there may be no confusion, where I started to read, if the Court please, refers to a conference in Mr. Knight's office on April 8th.

Mr. COAN. Mr. Knight has some paper in his hand that should be identified.

"Mr. GOLDSCHEIN. Will you mark this paper dated April 9, 1942, Government identification No. 2.

"Q. Now, will you look at this letter marked Government Exhibit No. 2 and tell us whether or not you identify that letter as a letter coming from your file.—A. I identify this letter dated April 9th addressed to Homer Davis and marked G-2 as being a copy of a letter which I wrote to Homer Davis, and I identify it as coming from my files and it is endorsed thereon, in my own handwriting, 'From files of H. S. K., August 31, 1944.'

"The COURT. Mr. Goldschein, will you let the witness have the books, it might help.

"The WITNESS. I think so.

"The COURT. And Mr. Knight, refer first to January of 1942.

"The WITNESS. I am going to do that, Your Honor, right away.

"The COURT. Yes; clear up those questions as to January 1942 and April.

"The WITNESS. Do you want me to answer that now?

"Q. Sir?—A. Do you want me to answer whether or not there was a conference prior to the letter?

"The COURT. Yes, the Court would like to have that information.

"The WITNESS. My date book shows that on Friday, January 23rd, 'Conference with Michael and Reifsnyder, trustee and attorney for Central Forging Company re sale to Maxi Company—charge Maxi.'

"Mr. GOLDSCHEIN. I want to renew my offer at this time, may it please Your Honor. I offer in evidence this letter marked Government Exhibit No. 1, dated January 29, 1942."

That was the letter already in evidence.

"The COURT. Now, let me ask one question before I rule on it.

"This exhibit Marked G-1 for identification was addressed to Mr. Reifsnyder following this conference, Mr. Knight?

"The WITNESS. The last letter I had?

"The COURT. The first letter.

"I will receive it. The objection is overruled and you may have an exception."

That related to the admission of the first letter of January 29th.

Mr. LEVY. I don't want to appear captious, but he is now reading of the offer of that letter, which would bring the letter under the testimony, and now I want to object to that particular bit of testimony and that offer and the admission of the letter in the office on the grounds that I have assigned previously.

The COURT. The objection is overruled. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed) _____ U. S. D. J.)

Mr. PRATT (continuing):

"Q. Now, Mr. Knight, will you tell the Court what was said between you, Mr. Michael and Mr. Reifsnyder on April 6, 1942, at that conference in your office with reference to the Central Forging Company?—A. If you will let me have the letter of April 9th it might refresh me somewhat.

"Mr. COAR. Mr. Knight, do you have any independent recollection of what was said at that meeting or conference?

"The WITNESS. Yes, I have some independent recollection of it.

"Mr. COAR. And without reference to the letter which you have

just requested would you give that independent recollection of what took place there?

"The WITNESS. My recollection is that at that time the plan of reorganization had been printed and approved—the record will show if that statement is correct, but it was about that time—and that it had been sent out to the creditors and the amounts determined. And the conversation that took place, among other things, was about having a date fixed when the distribution could be made; and there was a large amount of conversation about the mechanics of how the final turnover should be made in this case. The amounts to be paid had been practically agreed upon but there were a lot of mechanics from a lawyer's standpoint that would be necessary to be worked out, and the conference—at least the greater part of it—was about those mechanics. There was some difference between Mr. Reifsnyder and myself as to how the sale should be made. Actually it was a sale of a plant that was in reorganization to another company. My own judgment at that time was, from a lawyer's standpoint, that an outright sale for a consideration was not permissible under Chapter X and that it might be necessary to have an adjudication in bankruptcy in order to effect a valid sale.

"I subsequently came to the conclusion, and I think this is what I outlined to those gentlemen on that day, if not before when we talked it over, that this could be done by the fiction of the Maxi Company, the purchasing company, issuing its debenture bonds to the holders of the old bonds of the Central Forging Company.

"Mr. COAR. Pardon me, Mr. Knight, are you giving this as a part of what was discussed at the meeting?

"The WITNESS. Absolutely I am.

"Mr. COAR. Not as your judgment, but as to what was actually discussed at the meeting?

"The WITNESS. No, I am not giving it as my judgment. I am giving it as my judgment expressed at the meeting.

"Mr. COAR. That is what I want.

"The WITNESS. Do you want it?

"Mr. COAR. I have no objection to it excepting I want to be clear what the basis was.

The COURT. Yes, go ahead.

"A. (Continuing.) On a 20 percent basis——" That is connecting with the previous question: "issuing its debenture bonds to the holders of the old bonds of the Central Forging Company on a 20 percent basis, and then the debentures of the purchasing company to be made payable on demand. That would show a reorganization by the old bondholders getting bonds of a new company and then having deposited with an escrow agent a sufficient amount of money that the bondholder of the new bonds could come in and

cash his bonds forthwith, which would be, in effect, a cash sale but it would be the fiction of a reorganization. And those details we talked about.

"Now, in addition to that Mr. — I think most of the actual talking was done by Mr. Reifsnyder, there was some done by Mr. Michael, but after all there isn't such chance for a layman to talk when there are a couple of lawyers present, but Mr. Michael was there and sat on the opposite side of the desk and did engage in part of the conversation, which part I can't say. It was then suggested, possibly by Mr. Reifsnyder, that the amount of the loose assets, inventory and so forth, would be in excess of the amount that would be required to pay the preferred claims, the fees, allowances, administration expenses, and so forth, and whether there couldn't be a separate check made for $3,000 and deducted from the amount of the loose stuff which was in the neighborhood of twenty-three or twenty-four thousand dollars. The papers will show that. If it is necessary I can give it to you. My answer to that was it made no difference to me as representing the purchaser how the money was paid, whether it was paid in one or more checks; we had agreed to pay a certain amount and we were willing to pay that certain amount and my only interest was to receive a proper deed, bill of sale, assignment of accounts, and so forth, vesting absolute title in my clients. As to anything else I wasn't particularly interested.

"A statement was then made they could deduct that $3,000 from the amount of the inventory as shown, in addition to some smaller amounts that had been deducted by agreement, such as amounts that had been previously paid for administration expenses in the three months, and I think some amounts that had probably been set aside, a few hundred dollars, to pay some Columbia County Common Pleas expenses, that they would deduct this $3,000 from that and then give a check for $3,000 separate.

"The Court. Mr. Knight, let me interrupt just a moment.

"The Witness. Certainly.

"The Court (continuing). To see if I fully understand this plan or scheme. The top price which your client was to offer was not altered by the plan in any way?

"The Witness. Was not what?

"The Court. Was not altered.

"The Witness. That's right.

"The Court. Wasn't altered by the plan.

"The Witness. That's right.

"The Court. The only thing that was altered was the manner of its payment, is that right?

"The Witness. Well, when you speak of plan do you speak of the plan that was filed in reorganization?"

Mr. LEVY. One minute, please, Mr. Pratt. I desire to enter an objection to this line of questioning by the Court of the witness.

The COURT. On what ground?

Mr. LEVY. On the ground that it is assuming a fact that was not in evidence at that time, I don't know what the subsequent evidence of the Government may show; and, secondly, on the ground that it was a conclusion of the witness.

The COURT. A conclusion?

Mr. LEVY. A conclusion, yes. In other words, the law is very well laid down that reorganization plans cannot be altered by private agreements and we will come to that question in this lawsuit somewhere or other very shortly. But presently I say that the interrogation by the Court was only an interrogation which was legal—in effect, a legal conclusion which neither the witness nor anybody else could have changed in view of the plan that was filed in this case and the final confirmation of that plan, and that the Government cannot now, by collateral proceedings, attack either one of them.

The COURT. I can't see where it falls into the category of a conclusion. It would seem to me from what I recall of it, my memory having been refreshed by the testimony, that we merely sought to have Mr. Knight clarify his own testimony, but aside from that, and assuming it is only a conclusion, it is some proof of Mr. Knight's knowledge for the absence of the, if you want, of the scheme, if there was one. I can't see where it is a conclusion. The objection is overruled and you may have an exception. It may be true that his conclusion may not be binding on another soul in this case, but to the extent that it is proof of his knowledge as to what was being done it is admissible.

Let's go on.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed) _____ U. S. D. J.)

Mr. PRATT. On account of the interruption I will go back a few lines.

The COURT. All right.

Mr. PRATT (continuing):

"The COURT. Mr. Knight, let me interrupt just a moment.

"The WITNESS. Certainly.

"The COURT (continuing). To see if I fully understand this plan or scheme. The top price which your client was to offer was not altered by the plan in any way?

"The WITNESS. Was not what?

"The COURT. Was not altered.

"The WITNESS. That's right.

"The COURT. Wasn't altered by the plan.

"The WITNESS. That's right.

"The COURT. The only thing that was altered was the manner of its payment, is that right?

"The WITNESS. Well, when you speak of plan do you speak of the plan that was filed in reorganization?

"The COURT. No, this scheme, we will call it.

"The WITNESS. Oh. Well, all right, let's designate it as a scheme.

"The COURT. These negotiations that preceded the plan of reorganization we will term a scheme, and your offer remained the same, as I understand.

"The WITNESS. Absolutely, absolutely.

"The COURT. But you were to pay the amount of the offer, less $3,000, into the debtor's estate, we will say, is that correct?

"The WITNESS. Give it to Mr. Michael as trustee, yes.

"The COURT. The assets were to then suffer by some manner in which you were not interested, a proportionate reduction in value, appraised value?

"The WITNESS. That's right."

Mr. LEVY. Now, Mr. Pratt, will you just pardon me one minute? As I said, I don't want to be captious but at the same time Mr. Pratt has reread that testimony without my objection and I now want to ask that it be stricken out under that objection and that the objection be renewed.

The COURT. All right. Your objection is overruled and the motion to strike is denied. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed) _____ U. S. D. J.)

The COURT. Mr. Pratt may proceed.

Mr. PRATT (continuing):

"The COURT. But the payment was to be made in two checks?

"The WITNESS. That's right.

"The COURT. One, as you said, to be paid to Mr. Michael as the trustee and a second check in the amount of $3,000, is that right?

"The WITNESS. That is right.

"Q. Mr. Knight, who was that $3,000——A. I was about to say that.

"Q. Yes (continuing)—to be paid to?—A. I will give you the balance of the conversation as I recollect it.

"Q. All right, do that.—A. Because there is nothing in this letter which would indicate it and I have no record. In the first instance it was stated whether we would make a separate check, as I have already testified—whether my clients would have a separate check for $3,000, and I have given you the answer to that. Then it was stated we would like to have that made to some outside party and that was immediately followed by suggesting a couple

of lawyers' names who had nothing to do with this transaction at all. My answer to that was that I didn't see why we should make checks in that way.

"Q. Do you recall the names, Mr. Knight.—A. Well, I testified before the Grand Jury that I wasn't sure about the names, that there were some lawyers mentioned whom I didn't know at all. I have given that considerable thought since then and I can say now with a certainty that one of the names mentioned, and the only one whom I know, was Donald Johnson. That's a revision, as I say I said to you before the Grand Jury that I wasn't too sure. I have had time to think about that very thing since and I am now sure. I objected to that, not that Donald Johnson was an absolute stranger to me, but he had nothing to do with this case. I believe it was Mr. Reifsnyder who then said, 'Well, what about Mr. Fenner, he is connected with your company?' And my answer to that was, 'Well, I have no objection to a check being given to Mr. Fenner'—he is the counsel of this company, general counsel; I was special in this case—'and that's a matter that you can take up with Mr. Fenner.' Now, that was about the end of that conversation.

"My recollection is then, to go a step further, that—and this now I wouldn't remember without a refreshing from the letter; the balance that I have told you I have a distinct recollection of it but what I am about to say as to the balance of the day the letter states, which I wrote the next morning to Mr. Davis—that Mr. Reifsnyder called at my home and I had a conversation with him. I have no recollection of Mr. Reifsnyder being personally in my home. I would conclude from that letter and from the statement in the letter that Mr. Reifsnyder did call me on the telephone stating that he and Mr. Michael had had supper together in Sunbury and talked it over and so forth, but there was nothing, as I recollect, of any great importance in that conversation except possibly a reiteration of what had been said in the afternoon."

I am now going to the additional matters requested.

The COURT. Suppose we give the jurors about five minutes' respite here.

Let the jurors retire.

We will endeavor to reconvene, Mr. Bailiff, at about five minutes to 12. Counsel may take advantage of this recess too.

(Whereupon a short recess was taken.)

Mr. PRATT. Shall I proceed, your Honor?

The COURT. Yes, go ahead.

Mr. PRATT. "Now, who was that $3,000 to go to which—eventually go to, that was to be paid to Mr. Fenner?"

Perhaps I should read that again.

"Q. Now, who was that $3,000 to go to which—eventually go to, that was to be paid to Mr. Fenner?—A. I can't answer you that question; I didn't ask them and I don't know.

"Q. You didn't understand my question, probably. The name of Fenner was suggested, you said, in lieu of Donald Johnson?—A. That's right.

"Q. Now, what did they say with reference to making that check payable to Fenner?

"Mr. COAR. What did who say?

"Q. Either Mr. Michael or Mr. Reifsnyder.

"Mr. COAR. Let's get it definitely. Who did the saying if you recall definitely?

"The COURT. If you recall.

"Mr. COAR. Certainly.

"The WITNESS. I don't recall who did the saying, to use your language. I do recall that they were both there and that the payment was to be made and get back to Reifsnyder and Mr. Michael.

"The COURT. Go on.

"The WITNESS. I know that it was stated there by one of these men, and I can't tell you which one, that they would get back the money of the $3,000 check.

"The COURT. But how that was to be done no one said?

"The WITNESS. I didn't ask and don't know now.

"The COURT. All right, that is what I want to get clear. But it was said, it was said that the money was to come back to these men?

"The WITNESS. Absolutely.

"The COURT. All right.

"By Mr. GOLDSCHEIN:

"Q. Now, was there any—were the fees that Reifsnyder and Michael were supposed to get discussed before that time, Mr. Knight?

"Mr. COAR. You mean counsel and trustee fees?

"Mr. GOLDSCHEIN. The fees in this case.

"The COURT. Was there any discussion of fees in this case at any time at this conference, or prior to it?

"Mr. COAR. In the reorganization proceedings, Your Honor, not this case?

"Mr. GOLDSCHEIN. Oh, yes, of course.

"The COURT. That $3,000 I would refuse to consider a fee.

"The WITNESS. I am not talking about that.

"The COURT. We want to know about the fees.

"The WITNESS. The fees allowable by the court or prospectively allowable by the court, there was discussion of that not only at this time but times before.

"By Mr. GOLDSCHEIN:

"Q. Now, will you tell the Court, please, what Mr. Michael or Mr. Reifsnyder said in Mr. Michael's presence with reference to their fees?—A. My recollection is at the time the fees had either been allowed by the court—the record will show that—or had been rather tacitly understood what they were to get. I know we had several conferences in which we sat down with pencil and paper and figured out how much this particular cost would be, that particular cost, and how much fees would the court possibly allow to me and to them and all the way through. We had numerous figures on that. Both Mr. Michael and Mr. Reifsynder were not satisfied—I better put it not pleased—with the fee that was allowed to them, or at least they had been led to believe would be allowed to them.

"Q. Now, Mr. Knight, do you recall whether or not you related what took place at this conference between yourself and Michael and Reifsnyder with your clients on that particular day?—A. I am reasonably sure that some time that day I—if not that day immediately following—I told the substance of the conversation, so far as the $3,000 was concerned, to Mr. Davis, and as you will note, I wrote a letter to him on April 9th giving the résumé.

"Q. And this letter that is marked Government Exhibit No. 2, you wrote at that time in connection with this case?—A. Right.

"(Marked Exhibit G-2 in evidence.)"

Now, if the Court please, at this time I offer in evidence letter which has thus been identified in the testimony of Mr. Knight, and likewise I am offering it only as against Mr. Knight.

Mr. LEVY. If Your Honor please, for the same reasons that I assigned to Government Exhibit No. 2.

The COURT. G-2-A.

Mr. LEVY. G-2-A I assign to this.

The COURT. The objection is overruled and you may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed) _____ U. S. D. J.)

The COURT. Let it be marked in this proceeding G-2-B.

(Exhibit G-2-B received in evidence.)

Mr. PRATT. This letter and the last one, which was G-2-A, I have photostatic copies which I would like to substitute because these letters will be used at a later date of the trial for identification by other witnesses.

The COURT. Well, that wouldn't be any reason to substitute the photostats.

Mr. PRATT. Of course the letters will be available.

The COURT. Of course there is no objection to substituting the photostat. Counsel have no objection.

Mr. LEVY. No, we don't object to the photostatic copy being substituted for the original so the Government may properly care for it.

The COURT. Yes, I understand. That's all right.

Mr. PRATT. This letter of April 9, 1942, identified as a copy of Mr. Knight's letter to Mr. Homer Davis:

Exhibit G-2-B

"Mr. HOMER DAVIS,
"*Catawissa, Pa.*

"DEAR HOMER: This is to remind you to have printed the debentures on the form which I submitted to you, and which as I recollect it you took with you.

"Last evening about 8 o'clock Don Reifsnyder called at my home. He said that he and Mr. Michaels had had dinner in Sunbury, had talked over in detail the problem we discussed here for an hour or two about getting the extra money, and made a suggestion that it be paid to a lawyer whom he designated who would render a bill to the Maxi Company, namely that the Maxi Company now pay to the Trustee $22,982, being $3,000 less than the amount we calculated and then later on pay the $3,000 to a lawyer to be designated by Don who would render a bill and they would arrange then to get this $3,000.

"I was not impressed with carrying out this purpose through a stranger who had no occasion to do business for your plant, and knew none of you, never had been at the plant and never saw any of the parties. I suggested to Don that we would endeavor to protect him and that personally I would like to see it done through Mr. Fenner or young George Fenner; that in any event he would be perfectly justified in giving us a reduction of 15% on the receivables, especially in light of the fact that we were required to place at least one account, and probably more, in the hands of an attorney, and even if we collect it, it would cost us the 15% collection fees. 15% of the receivables taken over January 1 amounts to about $3,500.00. It was then arranged that he would write me a letter stating that they could not agree to the deduction of 15% which would amount to about $3,500 but they would agree to a flat deduction of $3,000 and make the price $22,982.00 plus some odd cents; and that we would endeavor to make some arrangements through Mr. Fenner to work out a plan satisfactorily.

"I told him I could not talk to Fenner between now and the

17th because I was leaving today and would not be back until the night of the 15th at least.

"If you feel that you can explain this to Mr. Fenner I would be very glad to have you take it up with him, and I will explain it more in detail when I get back, and am able to see him. If you feel it would be better for me to take it up in the first instance, you can let it go until I return.

"Very truly yours."

Continuing the testimony of Mr. Knight's.

"Q. Now, can you identify this letter, Government's identification No. 3?—A. Yes; that letter, signed 'Donald Reifsnyder', addressed 'Harry S. Knight, re Central Forging Company' dated April 9th was taken from my files by the Government agents with my permission and it is marked in my own handwriting 'From files of H. S. K. August 31, 1944.'

"Q. How did you receive it, Mr. Knight?—A. In the usual course, through the mail.

"Q. Through the mail. Did you have any conversation with Mr. Reifsnyder about that letter?—A. Well, this letter was written in pursuance of a conversation that took place at my office the day before and it so states on its face.

"The COURT. Mr. Knight, this letter is dated April 9th. It would seem, at least in its chronological order, to have followed the conference of April 8th, is that right?

"The WITNESS. It did.

"The COURT. Yes. Now, one thing: G-2 which is the letter which you wrote, and G-3 which is the letter purportedly written by Reifsnyder, are they related in any way insofar as this transaction is concerned?

"The WITNESS. Well, may I ask Your Honor is G-2 the one addressed to Mr. Davis?

"The COURT. Yes.

"The WITNESS. They are all related to the conversation that took place at my office on April 8th.

"The COURT. In other words, this correspondence followed this conference and has reference to the same matter?

"The WITNESS. That is correct."

NOON RECESS

AFTERNOON SESSION

The COURT. All right, Mr. Pratt.

Mr. PRATT. Continuing the testimony of Mr. Knight where I broke off. Commencing on what is page 48 in the transcript:

"Q. Now, can you identify this letter, Government's identifica-

tion No. 3?—A. Yes; that letter, signed 'Donald Reifsnyder,' addressed 'Harry S. Knight, re Central Forging Company' dated April 9th was taken from my files by the Government agents with my permission and it is marked in my own handwriting 'from files of H. S. K. August 31, 1944.'

"Q. How did you receive it, Mr. Knight?—A. In the usual course, through the mail.

"Q. Through the mail. Did you have any conversation with Mr. Reifsnyder about that letter?—A. Well, this letter was written in pursuance of a conversation that took place at my office the day before and it so states on its face.

"The COURT. Mr. Knight, this letter is dated April 9th. It would seem, at least in its chronological order, to have followed the conference of April 8th, is that right?

"The WITNESS. It did.

"The COURT. Yes. Now, one thing: G-2 which is the letter which you wrote, and G-3 which is the letter purportedly written by Reifsnyder, are they related in any way insofar as this transaction is concerned?

"The WITNESS. Well, may I ask Your Honor is G-2 the one addressed to Mr. Davis?

"The COURT. Yes.

"The WITNESS. They are all related to the conversation that took place at my office on April 8th.

"The COURT. In other words, this correspondence followed this conference and has reference to the same matter?

"The WITNESS. That is correct.

"Q. Now, Mr. Knight, did you have a conference in your office with Mr. Reifsnyder and Mr. Michael and others on April 24, 1942?—A. Yes.

"Q. Now, will you tell us who else was present at that time?—A. You mean other than Mr. Michael and Mr. Reifsnyder?

"Q. Mr. Reifsnyder and yourself.—A. I am positive that Mr. Davis of the Maxi Company was present. As far as my recollection goes I am not positive of other people being there, although I would not say, there might have been two or three others there of my client's group, I couldn't say that positively and I doubt—I will look at my book—no, I have nothing in the book that would particularize the names of the persons. I only have the factual entry that it was Central Forging Company and I do have the factual entry above that on the same day, 10:30, 'Central Forging Company, Michael and Reifsnyder,' and then below that, 'all day on Central Forging Company.'

"Q. Now, what was the purpose of that meeting on that day?—A. The purpose, you say?

"Q. Yes.—A. The purpose of that meeting was to pay out the money in accordance with the plan of reorganization and the several plans and schemes entered into and to pay the fees and allowances and so forth.

"Q. Who was to pay out the money, in particular?—A. It was to be paid out by the Maxi Company from their funds.

"Q. Who represented them?—A. Mr. Davis was the secretary and treasurer, Mr. Max Long was the president of the company. As I say, it is very possible that he was there. I wouldn't want to say he was or was not.

"Q. All right. Now, were the checks written out in your office at that conference, do you know?—A. Yes, they were. Mr. Davis was on the opposite side of the table from me, a long table, and he wrote them out. Whether they were signed in my office by him and Mr. Long as president, or whether they might have been signed in blank before they came there I can't tell you that. I paid no attention to it.

"Q. Do you know whether the checks were written out, filled out, in your office?—A. Yes, I am sure of that.

"Mr. GOLDSCHEIN. Mark this 'Government Exhibit No. 4' for identification.

"(Marked Exhibit G–4 for identification, as of this date.)

"Q. Now, Mr. Knight, on April 24, 1942, in your office, Mr. Michael, Mr Reifsnyder, and Mr. Davis were present. Did you prepare or make a memorandum of the money that the Maxi Manufacturing Company was expending?—A. I did.

"Q. I ask you to look at Government Identification No. 4 and ask you whether or not you can identify it.—A. I identify this as a pencil memorandum taken from my files by the Government agents marked with my own handwriting in pencil. There was a résumé made, and found in the files, immediately after this dated April 24th, which is probably a more detailed information, it being practically the same but taken from these figures.

"Q. And this was made at the time of the conference?—A. They were both made at the time of the conference.

"(Exhibit G–4 previously marked for identification received in evidence, as of this date.)"

Now, if the Court please, I offer in connection with that, as against the defendant Knight only, the memoranda, or papers, which were thus identified by him in connection with his testimony that has just been read.

Mr. LEVY. I want to enter the general objection that I entered to the testimony originally and to the other two letters that were offered in evidence here, and I would like to have an opportunity to examine these for a minute.

The COURT. Yes, you may examine them.

Mr. MARGIOTTI. You don't have a photostat of that, do you, Mr. Pratt?

Mr. PRATT. We have a photostat but not here in court.

The COURT. We can have the clerk make one for you, Mr. Margiotti.

Mr. MARGIOTTI. Thank you, sir.

(After examining Mr. Levy returned to Mr. Pratt.)

Mr. PRATT. They will be marked——

The COURT. May I see that document, first?

(Handed to the Court.)

The COURT. This may be received. Objection overruled. You may have an exception, Mr. Levy.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed) ---------- U. S. D. J.)

The COURT. Let this be marked G–2–D in this proceeding.

Mr. ROBINSON. May we have the customary instruction on that, too, Your Honor?

The COURT. Yes. It may await the other exhibits. I don't know whether there are others, but I will instruct on all of them.

Mr. ROBINSON. You have instructed them——

The COURT. We will wait and see if there are any more and then include them all in one instruction.

Mr. ROBINSON. The reason I am asking that is that this is in addition to the testimony.

The COURT. Yes.

(Exhibit G–2–D received in evidence.)

Mr. PRATT. Ladies and gentlemen, this sheet, as indicated from the testimony, these are papers made by Mr. Knight at his office and a lot of figures, and it is almost impossible to read them. The only thing to which the attention of the jury is called at this time is that it gives a computation.

The COURT. Keep your voice up, Mr. Pratt, counsel are having difficulty hearing you.

Mr. PRATT. Gives a computation in Mr. Knight's handwriting in pencil of the amounts of money that were paid out on this April 24th and it includes an item here "Add Fenner and H. S. K. $5,000." Then above it shows that "H. S. K.", Mr. Knight's initials, got a check direct for $2,000; "Add Fenner and H. S. K. $5,000," which is understandable. This also points out to the additional payment at that time to Edward Unangst, $225, Robert Michael, $8,420.05, to H. S. K.—Mr. Knight—$5,789.45, and to Robert Michael, as trustee of Central Forging Company, $8,548.33. These two sheets, as an exhibit together, give similar figures on the other side without any such specific designations as those I referred to on the first page.

Continuing the reading of Mr. Knight's testimony:

"Q. Now, Mr. Knight, on this memorandum, marked Government Exhibit No. 4, you have a figure, or the words and a figure, after it, 'Add Fenner and H. S. K. $5,000.' Now, will you tell the Court what that means?—A. I was asking a calculation in pencil at that time as to the amount it would cost my clients to acquire this plant, or to be paid out in addition to the amount that was paid out to Mr. Michael, and other figures that would appear on the other sheet marked April 24th there was to be added——

"Q. Will you tell the Court first, Mr. Knight, what that $5,000 and the words before it 'Add Fenner and H. S. K. $5,000' means on that particular sheet?—A. It represents or means $3,000 which I understand was to be paid to Mr. Fenner and it represents $2,000 which the Maxi Company paid me as an additional fee.

"Q. Now, Mr. Knight, on that 24th day of April 1942, in that conference at which Mr. Reifsnyder and Mr. Michael were present wherein you were discussing the amounts of money to be paid out and the $3,000 check, did you have any direct conversation with Mr. Michael with reference to that $3,000 check?—A. You are speaking of what date?

"Q. April 24, 1942—or April 8th, I beg your pardon; April 8, 1942.—A. That 's the conference which we talked about this morning at which Mr. Reifsnyder and Mr. Michael were present.

"The Court. No, Mr. Knight, Mr. Goldschein's question is more specific, he asked whether or not at that conference, and with reference to this $3,000 item, there was any conversation that you recall with Mr. Michael. In other words, did you say anything to Mr. Michael concerning the $3,000 or did Mr. Michael say anything to you with reference to the $3,000?

"The Witness. Yes, I have a recollection of saying something to Mr. Michael. Do you want that recollection?

"The Court. Yes, what was it?

"Q. Yes, what did you say to Mr. Michael and what did he say to you?—A. This was during the conversation about the $3,000 being separated and being paid in a separate check, to all of which I testified this morning. I remember saying to Mr. Michael—probably addressing it to both but in the end probably addressing it particularly to Mr. Michael——

"Mr. Coar. Did you say probably?

"The Witness. I said addressing to both but in the end addressing particularly to Mr. Michael.

"A. (Continuing.) Which will develop in my statement in a moment—I stated that it made no difference to me or to my clients how we paid the money as long as we were paying no more than the original amount, that my interest was to get the proper deed, bill of sale and assignments and so forth, and that was my purpose."

And quoting to what he said to Michael:

"You are under bond and an officer of the court——'

"Q. Who was that addressed to?—Mr. Michael?—A. That's right. They were both there to hear it but Mr. Reifsnyder was not under bond. (Continuing) 'and it is your responsibility what is done with the money, it isn't mine.'"

I will now read on page 61 as requested by Mr. Levy.

"The COURT. Did Mr. Michael make any response to that, Mr. Knight, that you can recall?

"The WITNESS. My recollection is he did not.

"The COURT. All right."

"Cross-examination by Mr. COAR:"

Cross-examination of Mr. KNIGHT:

"Q. Mr. Knight, in your 53 years of practice of *of* law you have been in the general practice of law, have you not?—A. I have.

"Q. During any part of those years did you specialize in any branch of the law particularly?—A. What's that?

"Q. Did any large part of your practice pertain to any particular branch of the law or particular type of litigation?—A. I was in a very active general practice. I have had considerable practice in the bankruptcy courts and after the beginning of 77B, which subsequently became Chapter X of the Chandler Act, I was in several reorganization cases."

I am reading on page 91 as requested by Mr. Levy.

"Q. What, then, did you mean, Mr. Knight, when you told the Court that regardless of what the inventory was after January 1st of 1942, that you were to pay a fixed amount?

"The COURT. Because he was buying it as of January 1, 1942. I understand it; if you are asking this for my benefit you needn't.

"Mr. COAR. I am asking this for the record.

"The COURT. The offer, as I understand the testimony, was predicated upon the assets and inventory. Is that right, Mr. Knight?

"The WITNESS. That's right.

"The COURT. Plus a sum for administration cost. But your client had in mind a definite ceiling above which it would not go, right?

"The WITNESS. That's right."

Continuing: "Q. Is it not the fact, Mr. Knight, that any discussion you had with Donald Reifsnyder with respect to a man named Fenner took place in your home in Sunbury? Isn't that the truth, sir?—A. I have already testified that I had no recollection of Mr. Reifsnyder or Mr. Michael being in my home; therefore, I could not say as a fact that that took place in my home. I do not know that Mr. Fenner's name was mentioned in my office on the afternoon of April 8th and that it was mentioned by Mr. Reifsnyder making the statement that he knew Mr. Fenner and whether

I would have any objection to working it through him; and I said I had not."

Mr. LEVY. Mr. Pratt, I think you unintentionally put in a word in that sentence, "I do not know."

Mr. PRATT. Well, I am reading it just that way and if it is a mistake in writing the excerpts I should be glad to correct it, Mr. Levy.

Mr. LEVY. I know it was unintentional but my transcript seems to say, "I do know."

Mr. PRATT. I shall correct it. You see, mine says, "do not."

Mr. MARGIOTTI. The record agrees with you [referring to Mr. Levy].

Mr. ROBINSON. "I do know——"

Mr. PRATT. I will read it again.

"Q. Is it not the fact, Mr. Knight, that any discussion you had with Donald Reifsnyder with respect to a man named Fenner took place in your home in Sunbury? Isn't that the truth, sir?—A. I have already testified that I had no recollection of Mr. Reifsnyder or Mr. Michael being in my home; therefore I could not say as a fact that that took place in my home. I do know that Mr. Fenner's name was mentioned in my office on the afternoon of April 8th and that it was mentioned by Mr. Reifsnyder making the statement that he knew Mr. Fenner and whether I would have any objection to working it through him; and I said I had not.

"Q. So that at that time, on April 24th, according to your testimony——A. No, not April 24th, April 8th.

"Q. All right, on April 8th, then, you knew then that moneys were to go from your client's hands into the hands of a man who was not entitled to them, to wit, one man named Fenner, did you know that, Mr. Knight?—A. I knew it was proposed to do it that way."

I will read on pages 102 to 104 as requested by Mr. Levy.

"The COURT. All right. Had the terms and conditions of this proposed plan been agreed upon as of February 13th?

"The WITNESS. February 13th?

"The COURT. Yes.

"The WITNESS. Well, to the best of my knowledge I think they practically had. I think—there may have been some details, but the plan which is to be filed in court, printed and approved by the court and notices sent out and then come back with opportunity for acceptances as fixed in the Act of Congress, was some time after February 23rd and what we understand by confirmation is a word that is used in the Act of Congress, and the plan is only consummated after it has been approved and the second step, as Your Honor well knows—who has had practice along this line—is confirmation. That is the last word.

"The COURT. In other words, as I understand it, by February 13th there was at least a tentative agreement as to the terms and conditions of the plan but the plan as such had not taken form?

"The WITNESS. Right.

"The COURT. Is that right? And after that the plan did take form. Was it ultimately filed in court?

"The WITNESS. Oh, yes.

"The COURT. And consummated?

"The WITNESS. Oh, yes, oh, yes.

"The COURT. All right.

"The WITNESS. I base a good deal of that answer on the fact that I have copy of a letter which I addressed to Mr. Reifsnyder on February 23rd and I said, 'I am enclosing herewith a redraft of the plan in accordance with your request over the telephone,' he having sent me his original draft which he said was approved and asked me to criticize it and put anything additional; or take from.

"The COURT. And the date of that was what?

"The WITNESS. February 23rd.

"The COURT. In other words, you were still working out details?

"The WITNESS. He sent that down to me and said, 'I am enclosing herewith a redraft—' that is after my corrections, evidently."

If the Court please, that concludes the reading of this testimony of Mr. Knight's.

Supreme Court of the United States

Order allowing certiorari

Filed January 3, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1949